

<div style="font-size: 24pt; font-weight: bold; margin-bottom: 5px;">000597</div> <div style="font-weight: bold; margin-bottom: 5px;">REQUEST FOR COUNCIL ACTION</div> <div style="font-weight: bold; margin-bottom: 5px;">CITY OF SAN DIEGO</div>		1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) 104 <div style="font-size: 24pt; font-weight: bold; margin-top: 5px;">N/A</div> 05/27					
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): Real Estate Assets Department					
4. SUBJECT: Surf Camp Concession Agreements		3. DATE: 3/26/2008					
5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.) James Barwick, 66145, MS-51A		6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.) Gary Jones 66264/ MS-51A					
7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input checked="" type="checkbox"/>							
8. COMPLETE FOR ACCOUNTING PURPOSES							
FUND							
DEPT.							
ORGANIZATION							
OBJECT ACCOUNT							
JOB ORDER							
C.I.P. NUMBER							
AMOUNT							
9. ADDITIONAL INFORMATION / ESTIMATED COST: Cost: None Fiscal Impact: \$170,000 to be deposited into the General Fund in FY09.							
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	3/28/08	8	DEPUTY CHIEF	<i>[Signature]</i>	4/2/08
2	EAS	<i>[Signature]</i>	4-7-08	9	COO	<i>[Signature]</i>	5-13-08
3	PURCH	<i>[Signature]</i>	4/22/08	10	CITY ATTORNEY	<i>[Signature]</i>	5/13/08
4	EOCP	<i>[Signature]</i>	4/16/08	11	ORIGINATING DEPARTMENT	<i>[Signature]</i>	5/12/08
5	LIAISON OFFICE	<i>[Signature]</i>		DOCKET COORD: <i>[Signature]</i> COUNCIL LIAISON: <i>[Signature]</i>			
6	FM	<i>[Signature]</i>	4/28/08	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: COUNCIL DATE: 5/27/08			
7	AUDITOR	<i>[Signature]</i>	5/9/08				
11. PREPARATION OF: <input checked="" type="checkbox"/> RESOLUTION(S) <input type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
See Attached.							
11A. STAFF RECOMMENDATIONS: Approve the resolutions.							
12. SPECIAL CONDITIONS:							
<u>COUNCIL DISTRICT(S):</u> 1 & 2							
<u>COMMUNITY AREA(S):</u> La Jolla Shores, Mission Beach, Ocean Beach, Pacific Beach							
<u>ENVIRONMENTAL IMPACT:</u> This action is not a "project" and therefore exempt from CEQA pursuant to the State Guidelines Section 15060 (c)(3).							
<u>HOUSING IMPACT:</u> None							
<u>OTHER ISSUES:</u> None							

11.

1. Resolution authorizing the Mayor, or designee to execute a new 64-month concession agreement with Surf Diva, Inc. for the operation of Surf Camps on City Beaches, specifically La Jolla Shores sites 1, 2, and 3.
2. Resolution authorizing the Mayor, or designee to execute a new 64-month concession agreement with Menehune Surf, Inc. for the operation of Surf Camps on City Beaches, specifically La Jolla Shores site 4, and Site 3, North of the South Mission Beach Lifeguard Tower, Mission Beach.
3. Resolution authorizing the Mayor, or designee to execute a new 64-month concession agreement with Ocean Experience Surf School for the operation of Surf Camps on City Beaches, specifically the site South of the Mission Beach Lifeguard tower and Santa Monica Avenue in Pacific Beach.
4. Resolution authorizing the Mayor, or designee to execute a new 64-month concession agreement with Pacific Beach Surf School for the operation of Surf Camps on City Beaches, specifically the sites North of Santa Rita Place and South of Pacific Beach Drive in Pacific Beach.
5. Resolution authorizing the Mayor, or designee to execute a new 64-month concession agreement with Pacific Surf School for the operation of Surf Camps on City Beaches, specifically at Ostend Court in Mission Beach.
6. Resolution authorizing the Mayor, or designee to execute a new 64-month concession agreement with Paskowitz Surf Camp for the operation of Surf Camps on City Beaches, specifically at Wilbur Street in Pacific Beach.
7. Resolution authorizing the Mayor, or designee to execute a new 64-month concession agreement with Surfari Surf School for the operation of Surf Camps on City Beaches, specifically at Pismo Court in Mission Beach.
8. Resolution authorizing the Mayor, or designee to execute a new 64-month concession agreement with San Diego Surf School for the operation of surf Camps on City Beaches, specifically at Beryl Street in Pacific Beach.

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: _____ REPORT NO: _____
ATTENTION: City Council
ORIGINATING DEPARTMENT: Real Estate Assets Department
SUBJECT: Surf Camp Concession Agreements
COUNCIL DISTRICT(S): 1 & 2
CONTACT/PHONE NUMBER: James Barwick 66145/MS 51A - Gary Jones 66264/MS51A

REQUESTED ACTION:

Authorize the Mayor, or designee to execute concession agreements for the operation of surf camps on City beaches.

STAFF RECOMMENDATION: Adopt the Resolutions.

BACKGROUND:

In 2002, the community recognized there was a significant impact from surf camp operators on public beaches. The City became involved with the surf camp operators in order to ensure standards of training, professionalism and liability were maintained. Park and Recreation (P&R), and Lifeguard Services, designated specific shoreline sites and implemented a permit process for surf camps. In 2004, the Real Estate Assets Department (READ) issued a Request for Proposals (RFP) on behalf of P&R. Surf camp operators were invited to bid on any number of sites under the terms of the RFP. The City granted three-year agreements to eight operators located on City beaches, including Ocean Beach, Mission Beach, Pacific Beach, and La Jolla Shores. The City has received combined rents averaging \$148,000 per year. The existing agreements expire on May 31, 2008.

DISCUSSION:

To enable opportunity for fair competition, a new RFP was issued in December 2007. A selection committee composed of representatives from P&R, Lifeguards, READ and the City of Encinitas Lifeguard Services evaluated the proposals using selection criteria from the RFP. The criteria included: Responsiveness, Professional Experience, Safety Standards, Financial Capability/Responsibility, Operating Plans and Community Service and Consideration. Eight responses to the RFP were received and the selection committee selected eight of those operators to enter into Concession Agreements with the City at a total of thirteen sites along San Diego's shoreline (Attachments 2-4). If approved by City Council, these agreements will commence June 1, 2008.

Sites:

The surf camp operators awarded sites are all current operators including: Surf Diva, Inc., Menhune Surf, Inc., Ocean Experience, Pacific Surf School, Pacific Beach Surf School, Paskowitz Surf Camp, and Surfari Surf School. One new operator, San Diego Surf School, has been awarded a site located in Pacific Beach.

In the RFP a total of fourteen sites were available. There was no direct competition on all but the La Jolla Shores sites. At La Jolla Shores, Lifeguards and P&R determined that there would be four sites permitted for the new contract period whereas currently there are five sites. Surf Diya bid on

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four sites and Menehune Surf bid on two of the four sites. After careful evaluation, the selection committee recommended awarding Surf Diva three sites in La Jolla and Menehune Surf one site. Surf Diva's proposal was the highest ranking of all eight proposals (see attached Matrix). Menehune Surf was awarded a second site in Pacific Beach.

Use:

Each surf camp site allows 50 students maximum with 25 students allowed in the water at any one time. No solicitation or marketing is permitted on City beaches. Renting or selling of beach equipment or other merchandise is not allowed under this agreement. Land-based operations are permitted from 8:30 A.M. to 5:00 P.M. daily. Water instructions are permitted from 9:00 A.M. to 4:00 P.M. daily. Operations are not permitted on the 4th of July.

Term:

The term of the new Concession Agreements is 64 months with either party having the right to terminate the Agreement with 90 days written notice. During informational meetings, surf camp operators requested that new agreements have a 5-year term which would terminate after the final four-month summer season. This term enables the operators to develop their businesses, plan marketing, and expand their commitment to give back to the community.

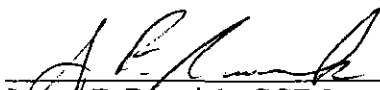
FISCAL CONSIDERATIONS: The City will receive rents from each site which are comprised of the greater of 10% of gross income or a guaranteed minimum rent. In each agreement, minimum rents have an annual increase, therefore, the City is guaranteed at minimum, an increase of 5% each year. Guaranteed minimum rents for FY09' total \$124,414. Projected revenue from all sites for FY09' is approximately \$170,000.


PREVIOUS COUNCIL and/or COMMITTEE ACTION: None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

A public outreach informational meeting was held January 3, 2008. In addition the RFP was advertised on the City's website, and in the San Diego Community Newspaper Group, and the Daily Transcript.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: None


James F. Barwick, CCIM
Director, Real Estate Assets


William Anderson, FAICP
Deputy Chief Operating Officer: Executive Director
City Planning & Development

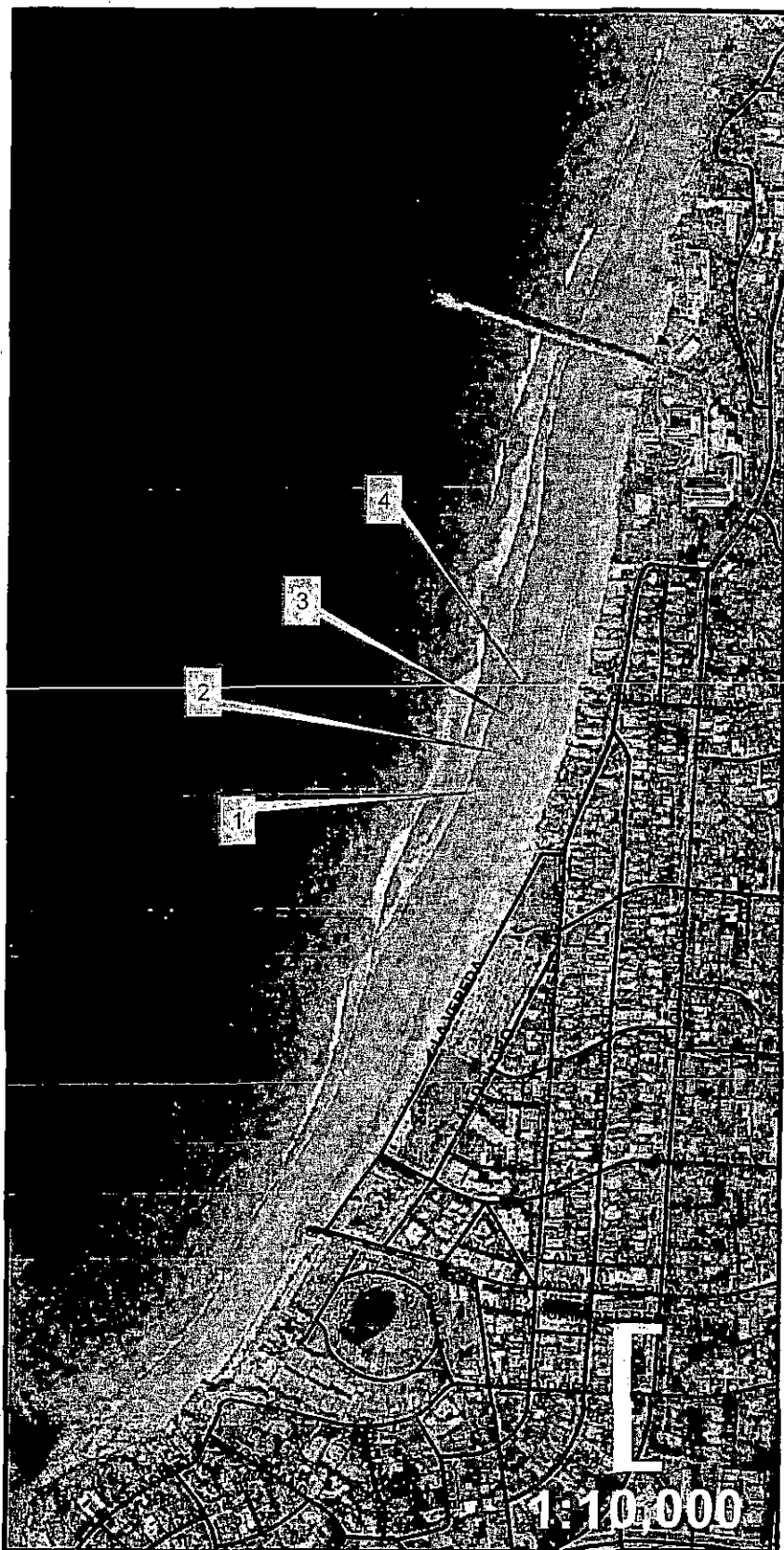
- Attachments:
1. Concession Agreements
 2. Aerial Map A – La Jolla Shores sites
 3. Aerial Map B – Pacific Beach sites
 4. Aerial Map C – Mission and Ocean Beach sites
 5. RFP Selection Criteria
 6. RFP Matrix – Scores

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EXHIBIT A

Northern Area Sites (La Jolla Shores)

ATTACHMENT 2



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EXHIBIT B**Central Area Sites (Pacific Beach)****Site 1 Wilbur Street****Site 2 Beryl Street****Site 3 South of Pacific
Beach Drive****Site 4 North of Santa Rita
Place**

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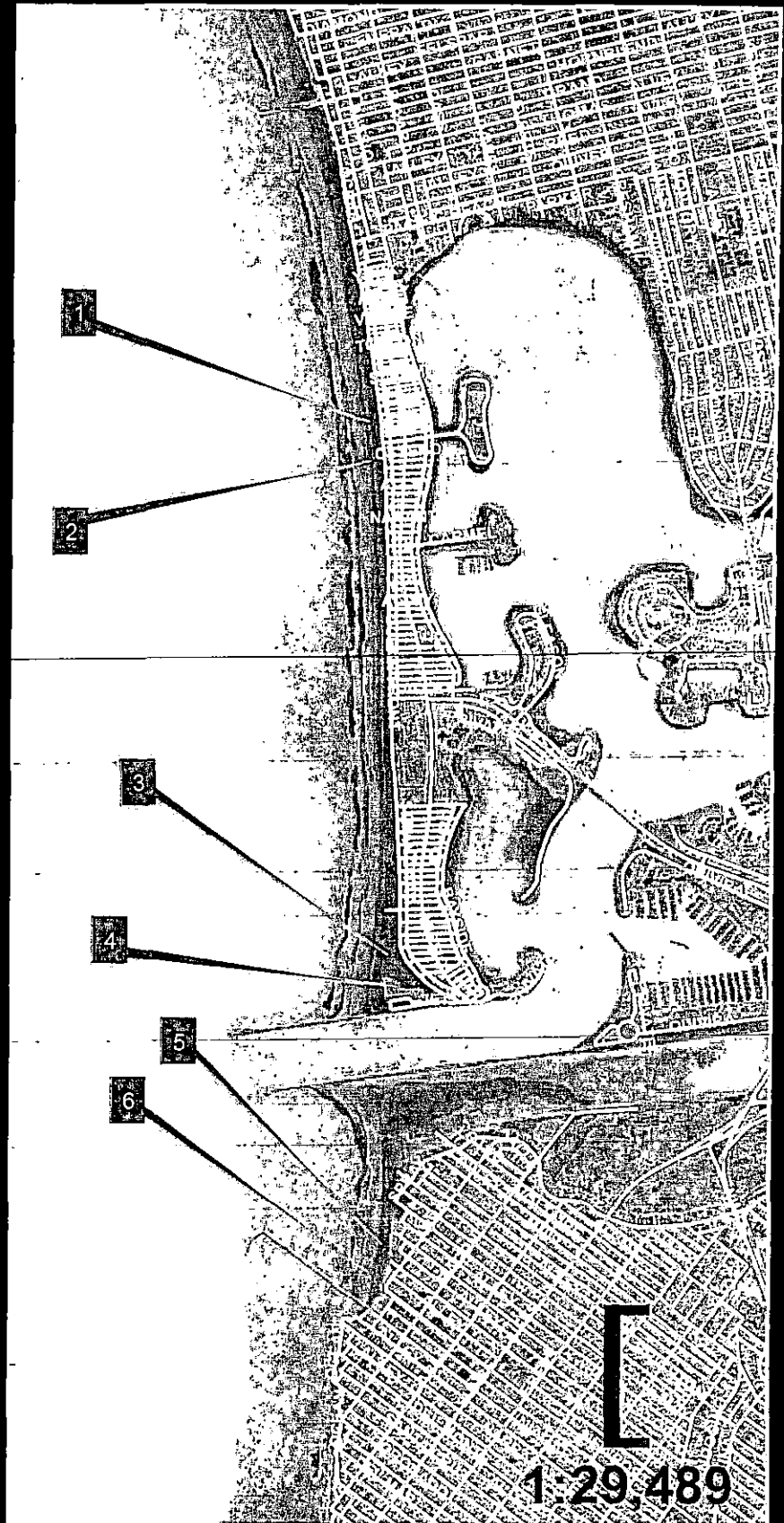


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EXHIBIT C

Southern Area Sites (Mission and Ocean Beaches)

- Site 1 Pismo Court
- Site 2 Ostend Court
- Site 3 North of the South Mission Beach Lifeguard Tower
- Site 4 South of the South Mission Beach Lifeguard Tower
- Site 5 Santa Monica Avenue
- Site 6 Newport Avenue



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Surf School/Camp RFP 2008Criteria for Selection

Proposals will be evaluated using the following criteria:

1. Responsiveness. The extent to which a proposal clearly addresses the elements of this RFP is a key factor in selection. A thorough, well-written response is essential.
2. Professional Experience. The past experience of the proposer in successfully managing an operation of this type, and the proposer's demonstrated ability to implement the components of this plan will be significant factors in proposal evaluation.
3. Financial Capability. The proposer must exhibit the necessary financial responsibility and strength to successfully carry out the concession operation for the term of the Agreement. The proposer must have the means to adequately staff the proposed Concession operation(s) and comply with all requirements of this Agreement.
4. Safety Standards. The proposer's Emergency Response Plan must sufficiently address any potential emergencies that might occur in connection with implementing this Agreement. Proposer's staff must possess the necessary certifications and be responsible for ensuring that the Concessionaire complies with all requirements included in attached Exhibit C, Surf Instruction Requirements.
5. Operating Plans. The proposer's Operating Plan for each Site included in the response to this RFP will be evaluated based on the overall reasonableness of the Plan, the scope of the instruction to be provided, and the extent to which the Plan(s) comply with the requirements of this proposal.
6. Community Service. The proposer's ability to contribute to the residents of the City of San Diego's enjoyment of CITY beaches will be evaluated based on the overall contribution and Site specific contributions.
7. Consideration. The consideration offered is an important factor in proposal selection; however, proposers are reminded that the CITY will hold the selected proposers to their offers, and proposers are cautioned against offering more than they can realistically afford to pay.

2008 Surf School RFP
Selection Committee Vote

Site	Proposer	Total Average
1 site: LJ Shores	Surf Diva - bid on 4 sites	96.25
1 site: LJ Shores	Menehune - bid on 2 sites	85.95
1 site: Wilbur	Paskowitz	90.75
1 site: Beryl	San Diego Surf School	63.25
2 sites: N. of Santa Rita Pl. & S. of PB Drive	Pacific Beach Surf School	87.00
1 site: Pismo Ct.	Surfari	74.63
1 site: Ostend Ct.	Pacific Surf School	73.50
2 sites: S. of South MB Lifeguard Tower, & Santa Monica	Ocean Experience	76.25

Evaluation Criteria:**Possible Points**

Responsiveness	5
Professional Experience	20
Financial Capability	20
Safety Standards	20
Operating Plans	10
Community Service	15
Consideration	10
Total Possible Points	100

000609

(R-2008-925)

(A)

(a-h)

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
DIEGO AUTHORIZING THE MAYOR TO EXECUTE A
CONCESSION AGREEMENT WITH SURF DIVA, INC. FOR
THE OPERATION OF SURF CAMPS ON CITY BEACHES.

WHEREAS, in 2002, the community recognized there was a significant impact from surf
camp operators on public beaches; and

WHEREAS, the Park & Recreation Department together with Lifeguard Services,
designated specific shoreline sites and implemented a permit process for surf camps; and

WHEREAS, to ensure standards of training, professionalism and liability were
maintained, the City became involved with the surf camps; and

WHEREAS, in 2004, the Real Estate Assets Department issued a Request for Proposal
(RFP) inviting surf camp operators to bid on any number of sites under the terms of the RFP; and

WHEREAS, the City granted three-year agreements to eight operators located on City
beaches, including Ocean Beach, Mission Beach, Pacific Beach and La Jolla Shores; and

WHEREAS, the City has received combined rents from the surf concessions averaging
\$148,000 per year; and


WHEREAS, the existing agreement expires on May 31, 2008; NOW, THEREFORE;

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor and/or
designee is hereby authorized to execute a new 64-month concession agreement with Surf Diva,
Inc., for the operation of Surf Camps on City Beaches, specifically La Jolla Shores sites 1, 2

and 3, under the terms and conditions set forth in the agreement on file in the office of the City Clerk as Document No. RR _____.

BE IT FURTHER RESOLVED, that the Council of the City of San Diego finds that this activity is not a project and is therefore not subject to from the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Kimberly Ann Davies
Deputy City Attorney

KAD:mm
05/13/08
Aud. Cert: N/A
Or.Dept:Park & Rec
R-2008-925
MMS# 6156

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR TO EXECUTE A CONCESSION AGREEMENT WITH MENEHUNE SURF, INC. FOR THE OPERATION OF SURF CAMPS ON CITY BEACHES.

WHEREAS, in 2002, the community recognized there was a significant impact from surf camp operators on public beaches; and

WHEREAS, the Park & Recreation Department together with Lifeguard Services, designated specific shoreline sites and implemented a permit process for surf camps; and

WHEREAS, to ensure standards of training, professionalism and liability were maintained, the City became involved with the surf camps; and

WHEREAS, in 2004, the Real Estate Assets Department issued a Request for Proposal (RFP) inviting surf camp operators to bid on any number of sites under the terms of the RFP; and

WHEREAS, the City granted three-year agreements to eight operators located on City beaches, including Ocean Beach, Mission Beach, Pacific Beach and La Jolla Shores; and

WHEREAS, the City has received combined rents from the surf concessions averaging \$148,000 per year; and

WHEREAS, the existing agreement expires on May 31, 2008; NOW, THEREFORE;

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor and/or designee is hereby authorized to execute a new 64-month concession agreement with Menehune


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Surf Inc., for the operation of Surf Camps on City Beaches, specifically La Jolla Shores site 4, and a second site, specifically the site North of the South Mission Beach Lifeguard Tower, Mission Beach, under the terms and conditions set forth in the agreement on file in the office of the City Clerk as Document No. RR _____.

BE IT FURTHER RESOLVED, that the Council of the City of San Diego finds that this activity is not a project and is therefore not subject to from the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney.

By


 Kimberly Ann Davies
 Deputy City Attorney

KAD:mm
 05/13/08
 Aud. Cert: N/A
 Or.Dept:Park & Rec
 R-2008-1022
 MMS# 6156

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
 City Clerk

By _____
 Deputy City Clerk

Approved: _____
 (date)

 JERRY SANDERS, Mayor

Vetoed: _____
 (date)

 JERRY SANDERS, Mayor

(C)

000613

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR TO EXECUTE A CONCESSION AGREEMENT WITH OCEAN EXPERIENCE SURF SCHOOL FOR THE OPERATION OF SURF CAMPS ON CITY BEACHES.

WHEREAS, in 2002, the community recognized there was a significant impact from surf camp operators on public beaches; and

WHEREAS, the Park & Recreation Department together with Lifeguard Services, designated specific shoreline sites and implemented a permit process for surf camps; and

WHEREAS, to ensure standards of training, professionalism and liability were maintained, the City became involved with the surf camps; and

WHEREAS, in 2004, the Real Estate Assets Department issued a Request for Proposal (RFP) inviting surf camp operators to bid on any number of sites under the terms of the RFP; and

WHEREAS, the City granted three-year agreements to eight operators located on City beaches, including Ocean Beach, Mission Beach, Pacific Beach and La Jolla Shores; and

WHEREAS, the City has received combined rents from the surf concessions averaging \$148,000 per year; and

WHEREAS, the existing agreement expires on May 31, 2008; NOW, THEREFORE;


BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor and/or designee is hereby authorized to execute a new 64-month concession agreement with Ocean Experience Surf School for the operation of Surf Camps on City Beaches, specifically the sites,

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south of the Mission Beach Lifeguard Tower and Santa Monica Avenue in Pacific Beach. under the terms and conditions set forth in the agreement on file in the office of the City Clerk as Document No. RR _____.

BE IT FURTHER RESOLVED, that the Council of the City of San Diego finds that this activity is not a project and is therefore not subject to from the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Kimberly Ann Davies
Deputy City Attorney

KAD:mm
05/13/08
Aud. Cert: N/A
Or.Dept:Park & Rec
R-2008-1058
MMS# 6156

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

000615

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR TO EXECUTE A CONCESSION AGREEMENT WITH PACIFIC SURF SCHOOL FOR THE OPERATION OF SURF CAMPS ON CITY BEACHES.

WHEREAS, in 2002, the community recognized there was a significant impact from surf camp operators on public beaches; and

WHEREAS, the Park & Recreation Department together with Lifeguard Services, designated specific shoreline sites and implemented a permit process for surf camps; and

WHEREAS, to ensure standards of training, professionalism and liability were maintained, the City became involved with the surf camps; and

WHEREAS, in 2004, the Real Estate Assets Department issued a Request for Proposal (RFP) inviting surf camp operators to bid on any number of sites under the terms of the RFP; and

WHEREAS, the City granted three-year agreements to eight operators located on City beaches, including Ocean Beach, Mission Beach, Pacific Beach and La Jolla Shores; and

WHEREAS, the City has received combined rents from the surf concessions averaging \$148,000 per year; and

WHEREAS, the existing agreement expires on May 31, 2008; NOW, THEREFORE;


BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor and/or designee is hereby authorized to execute a new 64-month concession agreement with Pacific

Surf School for the operation of Surf Camps on City Beaches, specifically at Ostend Court in Mission Beach, under the terms and conditions set forth in the agreement on file in the office of the City Clerk as Document No. RR _____.

BE IT FURTHER RESOLVED, that the Council of the City of San Diego finds that this activity is not a project and is therefore not subject to from the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Kimberly Ann Davies
Deputy City Attorney

KAD:mm
05/13/08
Aud. Cert: N/A
Or.Dept:Park & Rec
R-2008-1059
MMS# 6156

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

000617

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR TO EXECUTE A CONCESSION AGREEMENT WITH PACIFIC BEACH SURF SCHOOL FOR THE OPERATION OF SURF CAMPS ON CITY BEACHES.

WHEREAS, in 2002, the community recognized there was a significant impact from surf camp operators on public beaches; and

WHEREAS, the Park & Recreation Department together with Lifeguard Services, designated specific shoreline sites and implemented a permit process for surf camps; and

WHEREAS, to ensure standards of training, professionalism and liability were maintained, the City became involved with the surf camp; and

WHEREAS, in 2004, the Real Estate Assets Department issued a Request for Proposal (RFP) inviting surf camp operators to bid on any number of sites under the terms of the RFP; and

WHEREAS, the City granted three-year agreements to eight operators located on City beaches, including Ocean Beach, Mission Beach, Pacific Beach and La Jolla Shores; and

WHEREAS, the City has received combined rents from the surf concessions averaging \$148,000 per year; and

WHEREAS, the existing agreement expires on May 31, 2008; NOW, THEREFORE;

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor and/or designee is hereby authorized to execute a new 64-month concession agreement with Pacific Beach Surf School for the operation of Surf Camps on City Beaches, specifically the sites North

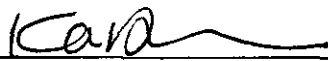
000618

of Santa Rita Place and South of Pacific Beach Drive in Pacific Beach, under the terms and conditions set forth in the agreement on file in the office of the City Clerk as Document

No. RR _____.

BE IT FURTHER RESOLVED, that the Council of the City of San Diego finds that this activity is not a project and is therefore not subject to from the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Kimberly Ann Davies
Deputy City Attorney

KAD:mm
05/13/08
Aud. Cert: N/A
Or.Dept:Park & Rec
R-2008-1023
MMS# 6156

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR TO EXECUTE A CONCESSION AGREEMENT WITH PASKOWITZ SURF CAMP FOR THE OPERATION OF SURF CAMPS ON CITY BEACHES.

WHEREAS, in 2002, the community recognized there was a significant impact from surf camp operators on public beaches; and

WHEREAS, the Park & Recreation Department together with Lifeguard Services, designated specific shoreline sites and implemented a permit process for surf camps; and

WHEREAS, to ensure standards of training, professionalism and liability were maintained, the City became involved with the surf camps; and

WHEREAS, in 2004, the Real Estate Assets Department issued a Request for Proposal (RFP) inviting surf camp operators to bid on any number of sites under the terms of the RFP; and

WHEREAS, the City granted three-year agreements to eight operators located on City beaches, including Ocean Beach, Mission Beach, Pacific Beach and La Jolla Shores; and

WHEREAS, the City has received combined rents from the surf concessions averaging \$148,000 per year; and

WHEREAS, the existing agreement expires on May 31, 2008; NOW, THEREFORE;

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor and/or designee is hereby authorized to execute a new 64-month concession agreement with Paskowitz Surf Camp for the operation of Surf Camps on City Beaches, specifically at Wilbur Street in


000620

Pacific Beach, under the terms and conditions set forth in the agreement on file in the office of the City Clerk as Document No. RR _____.

BE IT FURTHER RESOLVED, that the Council of the City of San Diego finds that this activity is not a project and is therefore not subject to from the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Kimberly Ann Davies
Deputy City Attorney

KAD:mm
05/13/08
Aud. Cert: N/A
Or.Dept:Park & Rec
R-2008-1060
MMS# 6156

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

000621

RESOLUTION NUMBER R- _____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR TO EXECUTE A CONCESSION AGREEMENT WITH SURFARI SURF SCHOOL FOR THE OPERATION OF SURF CAMPS ON CITY BEACHES.

WHEREAS, in 2002, the community recognized there was a significant impact from surf camp operators on public beaches; and

WHEREAS, the Park & Recreation Department together with Lifeguard Services, designated specific shoreline sites and implemented a permit process for surf camps; and

WHEREAS, to ensure standards of training, professionalism and liability were maintained, the City became involved with the surf camps; and

WHEREAS, in 2004, the Real Estate Assets Department issued a Request for Proposal (RFP) inviting surf camp operators to bid on any number of sites under the terms of the RFP; and

WHEREAS, the City granted three-year agreements to eight operators located on City beaches, including Ocean Beach, Mission Beach, Pacific Beach and La Jolla Shores; and

WHEREAS, the City has received combined rents from the surf concessions averaging \$148,000 per year; and

WHEREAS, the existing agreement expires on May 31, 2008; NOW, THEREFORE;


BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor and/or designee is hereby authorized to execute a new 64-month concession agreement with Surfari

000622

Surf School for the operation of Surf Camps on City Beaches, specifically at Pismo Court in Mission Beach, under the terms and conditions set forth in the agreement on file in the office of the City Clerk as Document No. RR _____.

BE IT FURTHER RESOLVED, that the Council of the City of San Diego finds that this activity is not a project and is therefore not subject to from the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Kimberly Ann Davies
Deputy City Attorney

KAD:mm
05/13/08
Aud. Cert: N/A
Or.Dept:Park & Rec
R-2008-1061
MMS# 6156

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

000623

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR TO EXECUTE A CONCESSION AGREEMENT WITH SAN DIEGO SURF SCHOOL FOR THE OPERATION OF SURF CAMPS ON CITY BEACHES.

WHEREAS, in 2002, the community recognized there was a significant impact from surf camp operators on public beaches; and

WHEREAS, the Park & Recreation Department together with Lifeguard Services, designated specific shoreline sites and implemented a permit process for surf camps; and

WHEREAS, to ensure standards of training, professionalism and liability were maintained, the City became involved with the surf camps; and

WHEREAS, in 2004, the Real Estate Assets Department issued a Request for Proposal (RFP) inciting surf camp operators to bid on any number of sites under the terms of the RFP; and

WHEREAS, the City granted three-year agreements to eight operators located on City beaches, including Ocean Beach, Mission Beach, Pacific Beach and La Jolla Shores; and

WHEREAS, the City has received combined rents from the surf concessions averaging \$148,000 per year; and


WHEREAS, the existing agreement expires on May 31, 2008; NOW, THEREFORE;

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor and/or designee is hereby authorized to execute a new 64-month concession agreement with San Diego Surf School for the operation of Surf Camps on City Beaches, specifically at Beryl Street in

Pacific Beach, under the terms and conditions set forth in the agreement on file in the office of the City Clerk as Document No. RR _____.

BE IT FURTHER RESOLVED, that the Council of the City of San Diego finds that this activity is not a project and is therefore not subject to from the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Kimberly Ann Davies
Deputy City Attorney

KAD:mm

05/13/08

Aud. Cert: N/A

Or.Dept:Park & Rec

R-2008-1062

MMS# 6156

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

C00625

**CITY OF SAN DIEGO
CONCESSION PERMIT**

THIS CITY OF SAN DIEGO CONCESSION PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SURF DIVA, INC. ("CONCESSIONAIRE"), to be effective upon execution by the parties and approval by the San Diego City Attorney (the "Effective Date"), as follows:

1. Incorporated Documents. This Permit is created pursuant to the Surf School/Camp REQUEST FOR PROPOSAL ("RFP") issued by the Real Estate Assets Department (December 11, 2007), CONCESSIONAIRE'S proposal in response to the RFP, dated January 29, 2008. The Operating Plan, submitted by CONCESSIONAIRE as part of its proposal, is attached hereto as Exhibit B and incorporated herein. Also attached and incorporated herein are the following documents: Exhibit A, Site Map; and Exhibit C, Surf Concession Requirements.
2. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to CONCESSIONAIRE, its employees, agents and contractors to operate surf instruction concessions ("Concessions") within CITY beach sites ("Sites") designated by the City of San Diego ("CITY"). The locations of the Sites included under this Permit are referenced below and more specifically, designated on the attached Exhibit A. However, any of the Sites named below are subject to change at CITY'S discretion.

Area/Beach	Site
La Jolla Shores	Sites 1, 2, & 3

Any of the above Sites may be deleted at any time by CITY upon thirty (30) days written notice to CONCESSIONAIRE. If an alternate site is not available, a proportionate amount of the minimum fixed concession fee (as specified in Section 10.B.) shall be waived for the deleted Site.

3. Use of Sites. This Permit is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate surf instruction concessions serving the general public under the terms and conditions of this Permit. No solicitation or marketing is permitted on City beaches. Renting or selling of beach equipment or other merchandise is not allowed under this Permit.
4. Maximum Days and Hours of Operation. Maximum hours of land-based operations are 8:30 a.m. - 5:00 p.m. Water instruction is permitted from 9:00 a.m. to 4:00 p.m. All Concessions must be vacated by 5:00 p.m. daily. The CITY reserves the right to change the days and/or hours of operation at its discretion. Operations are permitted seven days a week with the following exceptions:

A. Under no circumstances are operations permitted on the 4th of July holiday.

- B. Special Events. Unless otherwise authorized by the CITY Manager, CONCESSIONAIRE shall have no rights within certain areas of its Concession Sites or designated portions thereof during days in which special events are scheduled by CITY in these areas. CITY shall give CONCESSIONAIRE advance written notice of any such special events.
5. Competent Management. Throughout the term of this Permit, CONCESSIONAIRE shall provide competent management of the Sites for the permitted uses to the satisfaction of the City Manager. CONCESSIONAIRE covenants to operate the Concession for the above-specified purposes and diligently conduct the operations to produce a reasonable and substantial gross income.
6. Term. The term of this Permit ("Term") shall be shall be 64 months commencing on June 1, 2008, and expiring on September 30, 2013. This Permit may be terminated at any time by either party upon ninety (90) days prior written notice to the other party.
7. Holding Over. Any use of the Concession Sites by CONCESSIONAIRE after the expiration of this Permit is not permitted. Any extension of the term of the Permit beyond 64 months shall require approval of CITY Council.
8. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of such termination of this Permit. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY'S termination of this Permit.
9. Special Provisions
- A. Operating Plan. The Operating Plan(s) for June 2008 through May 2009 submitted with the CONCESSIONAIRE's response to the CITY'S Request for Proposal, shall be revised by CONCESSIONAIRE, if required by CITY to meet CITY'S approval, and the final CITY approved Plan(s) shall be incorporated into this Permit as Exhibit B. Beginning June 1, 2009, and for every 12 months thereafter, the CONCESSIONAIRE shall provide the CITY with an Operating Plan for the coming quarter for the CITY'S approval. All Operating Plans submitted to the CITY should be consistent with the format and content of the Plans included as Exhibit B. CITY shall have the right to approve or disapprove the proposed plan. Once approved, CONCESSIONAIRE shall not make any changes to the Plan without prior written approval of CITY. At all times, the CONCESSIONAIRE shall ensure that all operations permitted under this Permit comply with the Surf Instruction Requirements incorporated herein as Exhibit C.
- B. Exclusiveness of Permit and Unauthorized Vending. In addition to special events described in Section 4.B., CITY may, during the term of this Permit, enter into Permits with other CONCESSIONAIRES to provide surf instructions during times not

scheduled for operations in the approved Operating Plan(s) at the Sites permitted in this Permit. However, CITY, by granting this Permit to CONCESSIONAIRE, makes no warranty that the Sites shall be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities shall be maintained.

- C. Concession Sites. On each Site included in this Permit, CONCESSIONAIRE shall erect no improvements except one shade structure no greater than twenty (20) feet by twenty (20) feet or, no more than two shade structures no greater than ten (10) feet by ten (10) feet in size, or as shall, in the opinion of the CITY be needed to adequately serve the public. CITY reserves the right to request that the CONCESSIONAIRE modify the dimensions of the structure. The Sites must be designed and maintained so as to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Sites by the CONCESSIONAIRE must be approved by CITY and shall not remain on location after permitted hours of operation, unless prior approval of CITY is obtained. If in the opinion of CITY, the number of Sites within any Concession covered under this Permit at any time falls short of or exceeds the number of Sites needed to adequately serve the public, CONCESSIONAIRE shall, without liability to the CITY, upon receipt of notice from CITY, adjust the number of Sites to the number specified by CITY as adequate to serve the public. Until such time as CITY requires CONCESSIONAIRE, or agrees to a request from CONCESSIONAIRE, to increase or decrease the number of Sites CONCESSIONAIRE shall operate no more and no fewer than the Sites designated in this Permit. At each Site, CONCESSIONAIRE shall occupy no more than two and no less than one area of the dimensions specified herein.
- D. Improvements. Upon expiration or termination of this Permit, any and all improvements, trade fixtures, structures, and installations or additions to the Sites now existing or constructed on the Sites by CONCESSIONAIRE shall be deemed to be part of the Sites and shall become CITY'S property free of all liens and claims. All personal property remaining on the Sites after expiration or termination shall also become the property of CITY.
- E. Maintenance of Sites. CONCESSIONAIRE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Sites clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about said spaces to the satisfaction of CITY and at CONCESSIONAIRE's sole cost. All Sites must be cleaned up nightly by CONCESSIONAIRE or more often, as required.
- F. Standard of Employees. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations of the Concession in a creditable manner. CONCESSIONAIRE shall thoroughly train its employees in their duties and shall regularly monitor them to ensure that they behave in a courteous manner, do not disturb the quiet enjoyment of other beach users, and otherwise comply with all of the Surf Instruction Requirements in Exhibit C of this Permit.

10. Fees.

- A. Percentage Fees. Percentage fees will be calculated on a calendar month basis and will consist of ten percent (10.00%) of the gross income resulting from the operations permitted under this Permit. The City Manager, in his sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, Use of Sites, as may be approved in writing by the City Manager prior to the commencement of any additional service or operation. Provided however, any activity conducted on the Sites without the prior written approval of the City Manager shall be subject to the requirements of Section 10.E., Unauthorized Use Charge.
- B. Minimum Fees. For **Site 1 - La Jolla Shores**, the annual Minimum Fee established for the first year following the effective date of this Permit is eighteen-thousand dollars (**\$18,000**), which is one-thousand five-hundred dollars (\$1,500) on a monthly installment basis. For **La Jolla Shores Sites 2 & 3**, the annual Minimum Fee established for the first year following the effective date of this Permit is twelve-thousand five-hundred dollars (**\$12,500**) **per site**, which is one-thousand forty-one dollars and sixty seven cents (\$1,041.67) on a monthly installment basis **per site**.
- C. If the Minimum Fee is greater than the percentage fee on a calendar month basis, one-twelfth (1/12) of the Minimum Fee is required to be paid for that month. Minimum Fees are to be paid in monthly installments on or before the day of the calendar month when percentage fees are due pursuant to Section 10.I., Time and Place of Payment. In the event that the combined total percentage fee payments and monthly installments of the Minimum Fee during any Permit year equal or exceed the required Minimum Fee for that year, for the balance of that year, CONCESSIONAIRE shall discontinue paying monthly installments of the Minimum Fee until the beginning of the next Permit Year. If in any Permit Year, Minimum Fees paid plus Percentage Fees paid exceed the annual Minimum Fee and also exceed the fee which would have been paid if the Percentage Fee had been paid on total gross income, the excess over the total fee owed shall be credited against the next payable fee as it becomes due. It is the intent of this provision that CONCESSIONAIRE shall pay monthly installments of the annual Minimum Fee as a guarantee against the Percentage Fee requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

Minimum Fee Adjustment. Effective at the beginning of the first day of the 13th, 25th, 37th, 49th and 61st month of this Permit, the annual Minimum Fee shall be eighty percent (80.00%) of the annual average of actual rents paid in the Initial Term plus any option terms exercised under this Permit. The annual average shall then be divided by twelve (12) to establish the new monthly Minimum Fee. It is recognized that the adjustments shall be calculated by the CITY upon completion of payments due for the preceding year in order to determine the amount of the Minimum Fee for the option period. Until such calculations are completed, CONCESSIONAIRE shall continue paying monthly Minimum Fees at the prior rate. Any additional fees determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to the CITY within thirty (30) days following written notice. In no

event shall the Minimum Fee Adjustment result in a decrease in the Minimum Fee requirement in effect immediately prior to the adjustment date.

- D. Annual Percentage Adjustment to Minimum Fee. If CONCESSIONAIRE has not paid percentage fees during the previous 12 month period, then the Minimum Fee shall increase to one-hundred five (105.00%) of the previous year's Minimum Fee.
- E. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any concession fees when due, CONCESSIONAIRE will pay, in addition to the unpaid concession fees, a fee of \$25.00. If the fees are still unpaid at the end of the fifteen (15) days, CONCESSIONAIRE shall pay a fee of \$50.00, which is mutually agreed by the parties to this Permit to be appropriate to compensate the CITY for loss resulting from concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- F. Unauthorized Use Charge. CONCESSIONAIRE shall pay CITY fifty percent (50.00%) of the gross receipts for any service or use that is not permitted by this Permit. This payment is subject to the due date provided in this Permit for minimum guaranteed fees payments and the provision for delinquent concession fees payments and the provision for delinquent concession fees. The existence of the fifty percent (50.00%) charge in this clause and the payment of this charge or any part of it, do not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default CONCESSIONAIRE for participating in or allowing any unauthorized use.
- G. Gross Income. "Gross income" or "gross receipts", as used in this Permit shall include all income resulting from the Concession from whatever source derived whether received or to become due. Provided; however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by CONCESSIONAIRE in computing gross income. Gross income shall not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The percentage concession fees shall be calculated and paid by CONCESSIONAIRE on the basis of gross income whether the income is received by CONCESSIONAIRE or by any permittee or licensee, or their agents, and all gross income received by any permittee, licensee, or other party as a result of occupancy or operation of the Site(s) shall be regarded as gross income of CONCESSIONAIRE for the purpose of calculating the percentage concession fees required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by or pursuant to this Permit.
- H. Inspection Of Records.
 - i. Records. CONCESSIONAIRE shall, at all times during the Permit term, keep or cause to be kept true and complete books, records, and accounts of

all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site(s). The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, class lists, or other documents as necessary to allow CITY to easily determine the gross income. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day. In the event of admission charges or concession rents, CONCESSIONAIRE shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is approved by the CITY.

- ii. Financial Statements. Within sixty (60) days after the end of the Initial Term and any subsequent option terms, CONCESSIONAIRE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of concession percentage fees paid CITY for the year are classified according to the categories of business established for any percentage concession fees and for any other business conducted on or from the Site(s). The statement shall be signed by CONCESSIONAIRE and Financial Representative of CONCESSIONAIRE attesting to the accuracy thereof, which shall be legally binding upon CONCESSIONAIRE.
- iii. Right to Inspect. All CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 10.G.(i), will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Site(s). The CITY, at its discretion, shall have the right to inspect and audit the business of CONCESSIONAIRE, its agents, permittees, and licensees operating on, and in connection with, the Site(s) as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the requirements of this Permit. At CITY'S request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Permit information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.
- iv. Audit Cost. The full cost of the CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case CONCESSIONAIRE agrees to pay CITY'S cost of audit(s):

The audit(s) reveal an underpayment of more than five percent (5.00%) or more than \$10,000.00, which ever is less, between the concession fees due as reported and paid by CONCESSIONAIRE, pursuant to this Permit and concession fees determined by the audit(s).

CONCESSIONAIRE has failed to maintain complete and true books, records, accounts, and supporting documents in strict accordance with this section.

Any underpayment of concession fees less than five percent (5.00%) revealed by the audit may be paid within thirty (30) days written notice from the CITY without penalty, otherwise, CONCESSIONAIRE shall incur interest charges on the delinquent amount as defined in Section 10.D., DELINQUENT CONCESSION FEES. CITY will credit any overpayment against incoming concession fees. Any overpayment determined after the end of this Permit will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- I. Default. CONCESSIONAIRE's failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Permit, a breach of this Permit and cause for termination.
- J. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Income subject to percentage fees was earned. Checks shall be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
- K. Security Deposit. The CONCESSIONAIRE shall deliver to CITY with the executed copies of this Permit, a good faith deposit in the amount of two thousand five hundred dollars (\$2,500.00). All or any portion of the principal sum shall be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this Permit by CONCESSIONAIRE, CONCESSIONAIRE's successors or assignees, or for payment of expenses incurred by CITY as a result of CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Permit. If at the end of the term of this Permit, CONCESSIONAIRE has performed all of the provisions of the Permit, the deposit or any remaining balance shall be returned to the CONCESSIONAIRE without interest.

The security deposit may be increased by CITY proportionate to any increase in Minimum Fees. CONCESSIONAIRE shall maintain the security deposit throughout the Term. **Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Permit, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**

- i. Utilization. If CITY utilizes all or any portion of the security deposit, upon 10 days prior written notice, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
 - ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure CONCESSIONAIRE'S obligations under this Permit.
 - iii. Return. Provided CONCESSIONAIRE is not in breach or default of this Permit, CITY shall return the security deposit, or any balance thereof, to CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Permit.
11. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the City Manager, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the City Manager's sole and absolute discretion, unless otherwise expressly provided.
 12. Acceptance of Sites. CONCESSIONAIRE represents and warrants that it has independently inspected the Sites and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Sites. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Permit. CONCESSIONAIRE further acknowledges that the Sites are in the condition called for by this Permit, that CITY has performed all work, if any, related to the Sites and required by this Permit, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Sites, including without limitation the presence of any hazardous substances.
 13. Maintenance of the Sites. CONCESSIONAIRE shall, at CONCESSIONAIRE'S sole cost and expense and to CITY'S satisfaction, maintain the Sites in a decent, safe, healthy and sanitary condition at all times during the Term.
 14. Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Sites in a creditable manner.
 15. Inspection. CITY may, at all times upon prior notice, enter and inspect the Sites.

16. Insurance. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a current certificate of insurance for: (1) Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of Two Million Dollars (\$2,000,000).

- A. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
- B. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Permit.
- C. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- D. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- E. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Permit, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Sites, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- F. Modification. To assure protection from and against the kind and extent of risk existing on the Sites, CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Permit.

- G. Accident Reports. CONCESSIONAIRE shall report to CITY any accident causing more than Five Thousand Dollars (\$5,000) worth of property damage or any serious injury to persons on the Sites. Such report shall be delivered to CITY within five (5) days of such accident and shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- H. Failure to Comply. If CONCESSIONAIRE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. CONCESSIONAIRE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify CONCESSIONAIRE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. CONCESSIONAIRE shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice.
- Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**
17. Indemnification. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
18. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in CONCESSIONAIRE'S use of the Sites, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

19. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Permit from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.
20. Drug-free Workplace. CONCESSIONAIRE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Sites and specifying the actions that will be taken against employees for violations of the prohibition; and
 - B. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. CONCESSIONAIRE'S policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
21. Disabled Access Compliance. CONCESSIONAIRE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
22. CONCESSIONAIRE'S Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE'S occupancy, use, development and maintenance of the Sites and any damages to the improvements on, under, or in the vicinity of the Sites resulting directly or indirectly thereby.
23. No Nuisance. CONCESSIONAIRE shall not use the Sites in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
24. No Assignment. CONCESSIONAIRE shall not assign any rights granted by this Permit or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.

25. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Sites, CONCESSIONAIRE shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE'S cost.
26. Advertisement and Marketing. Any advertising or marketing which reference the City of San Diego may not be distributed by the CONCESSIONAIRE without the advanced written approval of the CITY. If CONCESSIONAIRE uses the City of San Diego in any context to promote its business operations without prior written approval by CITY, CONCESSIONAIRE will be considered to be in default. No advertising or marketing materials of any kind may be posted or distributed on any City beach without the advanced written approval of the CITY.
27. Encumbrances. CONCESSIONAIRE shall keep the Sites free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Sites, including without limitation CONCESSIONAIRE'S failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
28. Defaults and Remedies.
- A. Default by CONCESSIONAIRE. In the event that:
- i. CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Permit to be performed or fulfilled by CONCESSIONAIRE and shall fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
 - ii. CONCESSIONAIRE shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or
 - iii. CONCESSIONAIRE shall make a general assignment for the benefit of creditors;
- then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate this Permit and all rights of CONCESSIONAIRE and of all persons claiming rights through

CONCESSIONAIRE to the Concession Sites or to possession thereof, and CITY may then enter and take possession of the Sites and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided; however, in the event that any default described in Part (1)a. of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY shall not terminate this Permit pursuant to the default if CONCESSIONAIRE immediately commences to cure the default and diligently pursues cure to completion. In any event, either party may terminate this Permit without cause by giving ninety (90) days written notice of intent to terminate to the other party.

B. Abandonment by CONCESSIONAIRE. Even though CONCESSIONAIRE has breached the Permit and abandoned the Concession Site(s), this Permit shall continue in full force and effect for so long as CITY does not terminate this Permit, and CITY may enforce all its rights and remedies under this Permit, including, but not limited to, the right to recover the concession fee as it becomes due, plus damages. For purposes of this section, the following do not constitute a termination of CONCESSIONAIRE's right to possession or operation:

- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Permit.
- ii. The appointment of a receiver upon initiative of CITY to protect CITY'S interest under this Permit.

29. Damages. Damages which CITY may recover in the event of default under this Permit include the worth, at the time of the award, of the amount by which the unpaid concession fee for the balance of the term after the date of award or for any shorter period of time specified in this Permit exceeds the amount of concession fee loss for the same period that the CONCESSIONAIRE proved could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

30. Compliance with Laws. CONCESSIONAIRE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites.

31. Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Sites, including any licenses or permits. CONCESSIONAIRE acknowledges that this Permit may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment

of taxes levied on that interest. CONCESSIONAIRE shall pay all such possessory interest taxes. CONCESSIONAIRE'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Permit.

32. Hazardous Substances. CONCESSIONAIRE shall not allow the installation or release of hazardous substances in, on, under, or from the Sites. CONCESSIONAIRE and CONCESSIONAIRE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Sites without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.

- A. Remediation. If any release of a hazardous substance occurs, CONCESSIONAIRE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
- B. Indemnity. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- C. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Sites, CONCESSIONAIRE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, CONCESSIONAIRE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Sites.
- D. Environmental Assessment. At CITY'S option upon expiration or termination of this Permit, an environmental assessment of the Sites shall be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE'S sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Sites, and in what quantities. If

any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and CONCESSIONAIRE shall pay all costs and expenses therefor.

33. Waiver. CITY'S failure to insist upon the strict performance of any of CONCESSIONAIRE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Sites is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
34. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
35. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
36. Number and Gender. Words of any gender used in this Permit shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
37. Captions. Section headings and captions shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Permit. The numbers of the paragraphs and pages of this Permit may not be consecutive. Such lack of consecutive numbers shall have no effect on the enforceability of this Permit.
38. Entire Permit. This Permit constitutes the entire Permit between the parties and supersedes any and all prior understandings, representations, warranties and Permits between them and pertaining to this Permit and CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
39. Legal Proceedings. If either party commences legal proceedings to enforce or interpret any right or obligation under this Permit, the prevailing party shall be entitled to an award of costs related thereto, including without limitation reasonable attorney fees and court costs.

40. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

SURF DIVA, INC.
Isabelle Tihanyi
Caroline Tihanyi
2148 Avenida de la Playa, Ste E
La Jolla, CA 92037

41. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites.
42. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Permit shall be deemed to refer to "the Mayor or his/her designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

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000641

43. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Permit, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
James Barwick, Director
Real Estate Assets Department

Date: 4/9/08

SURF DIVA, INC., CONCESSIONAIRE

BY: Isabelle Tihanyi
Isabelle Tihanyi, CEO
Carole Tihanyi
Caroline Tihanyi, CFO

APPROVED AS TO FORM AND LEGALITY:

Effective Date: _____

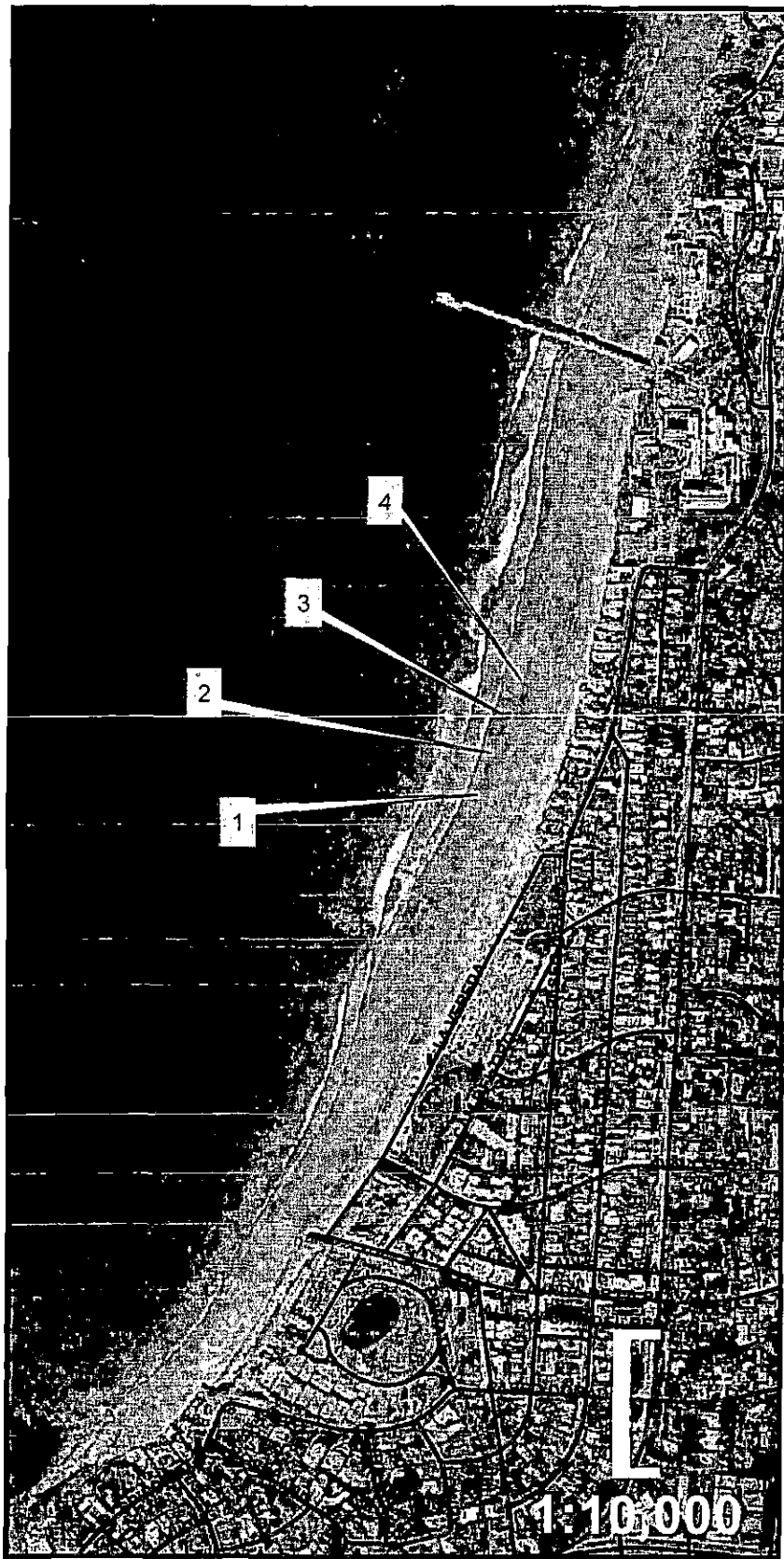
MICHAEL J. AGUIRRE, City Attorney

BY: _____
_____, Deputy City Attorney

000642

EXHIBIT A

Northern Area Sites (La Jolla Shores)



Every reasonable effort has been made to assure the accuracy of this map. However, neither the SanGIS participants nor San Diego Data Processing Corporation assume any liability arising from its use.

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Operating Plan –

000643

Surf Diva Surf School

*Surf camp for women/girls; private lessons, corporate events for men/boys or co-ed
(La Jolla Shores Site #1)*

Motto: "The Best Surfer In The Water Is The One Having The Most Fun!"

SCHEDULE OF CLASSES:

2-Day Weekend Clinics for Women & Girls
5-Day Weeklong Camps for Women & Girls
Private Lessons Monday through Sunday for Women, Girls, Men, Boys ("Guys on the Side")
Overnight **Boarding School** for 12-17 year old teens
Overnight **Boarding School** for adults 18 & up
Corporate Events (Co-Ed)
Birthday Parties (Co-Ed)
Special Events & Group Lessons (Co-Ed)
Girl Scout Special Surf Lessons – to obtain the Surfing Badge

NUMBER OF STUDENTS PER CLASS:

Surf Diva Surf School will have a maximum of 50 students on land, with a maximum of 25 students in the water at any one time.

Ratio: 1 instructor for every 5 students

DAYS & HOURS OF OPERATION:

Monday-Friday Morning Session:	8:30 am – 12:30 pm (<i>water instruction begins at 9:30am</i>)
Monday-Friday Afternoon Session:	1:00 pm – 5:00 pm
Saturday & Sunday "Weekend Clinic":	9:00am – 11:00am; 12:00pm – 2:00pm; 3:00pm – 5:00pm (<i>water instruction begins at 9:30am</i>)
Monday–Sunday Private Lessons:	8:30am – 5:00pm (<i>water instruction begins at 9:30am</i>)

- No Classes on July 4th

PRICE LIST:

\$148.50	2-Day Weekend Clinics for Women & Girls
\$104.50	(Level Two) 2-Day Weekend Clinics for Women & Girls
\$379.50	5-Day Weeklong Camps for Women & Girls

- 1) **Ocean Awareness/Currents/Surfing Etiquette** (how to stay out of someone's way, when not to go out surfing, how to not panic, the importance of using sunscreen, etc...)
- 2) **Paddling Out** (different ways to go over the waves, including: duck dive, push up over wave, turn turtle, sitting on tail of board, turning for a wave)
- 3) **Evolution of Surfboard and Surfing Equipment Design** (shaping of boards, what the fin does, how the shape effects function, what material is used in making boards, how the design has changed over time, how a wetsuit works)
- 4) **Environmental Conservation** (how to minimize our impact on the environment, how human actions affect the beach and ocean environment, why it's important to pick up trash).
- 5) **What is a City Beach and Their Importance** (purpose of City beaches in preserving nature and teaching people about our environment)
- 6) **The Marine Environment** (observing the ocean, tides, wave structure, the surrounding environment, and marine biology and habitat)
- 7) **Keeping Active** (the importance of exercise and using our City's many parks and recreational programs to help us stay healthy)

000644

Sample Lesson Plan for a 2 hour lesson
--

1. 35 minute - Land lecture discussing Ocean Safety, Ocean Awareness, Surfing Etiquette, Parts of the Surfboard
2. Students suit up, apply sunscreen
3. Students are divided into groups of 5 with matching rashguards
4. Review conditions
5. Review on how to get in the surf, 5 practice 'pop ups' before entering surf
6. Correct techniques in the surf
7. Demonstrate and teach students how to move across the board once they are standing, to get more speed in the wave.
8. How to angle the board across the wave (front-side and backside). This action requires a proper explanation of 'dropping in' and inside positioning.
9. Explain that, in surfing, as with all sports, there are rules. They are not written down, but you must learn them- the beauty is that the rules apply EVERYWHERE around the world
10. Code of conduct for surfing etiquette and explain to students how surfers at the peak have priority
11. Finish lesson, review on what they have learned and experienced

SUMMARY OF MATERIALS COVERED IN CLASS:

At La Jolla Surf Camp our Surf Instructors teach class participants the basic fundamentals of surfing. Before our students even step into the water, our Surf Instructors thoroughly review the following (note that per the RFP specifications, this is a brief summary of the material covered in each class offering):

- Ocean Awareness
- Ocean Currents/Formation of Waves (different types of beaches, etc...)
- Safety (priority rules, right of way in the water, etc...)
- Wave Riding (foot position, "pop-ups", hand placement, paddling, etc...)
- Surfing Etiquette
- Environmental Awareness
- Marine Life
- Stretching Techniques
- Parts of the Surfboard
- History of Surfing

000645

INTERPRETIVE PROGRAM OR ACTIVITY:

La Jolla Surf Camp teaches all participants the importance of keeping our natural resources and the ocean environment clean and healthy. It is everyone's responsibility to respect the environment. Teaching this respect for the surfing environment is an integral part of what we do.

La Jolla Surf Camp uses an interpretive program or activity for each of its classes.

Lesson plans are geared to 5-10 year olds, for both boys and girls.

- 1) **Ocean Awareness/Currents/Surfing Etiquette** (how to stay out of someone's way, when not to go out surfing, how to not panic, the importance of using sunscreen, etc...)
- 2) **Paddling Out** (different ways to go over the waves, including: duck dive, push up over wave, turn turtle, sitting on tail of board, turning for a wave)
- 3) **Evolution of Surfboard and Surfing Equipment Design** (shaping of boards, what the fin does, how the shape effects function, what material is used in making boards, how the design has changed over time, how a wetsuit works)
- 4) **Environmental Conservation** (how to minimize our impact on the environment, how human actions affect the beach and ocean environment, why it's important to pick up trash).
- 5) **What is a City Beach and Their Importance** (purpose of City beaches in preserving nature and teaching people about our environment)
- 6) **The Marine Environment** (observing the ocean, tides, wave structure, the surrounding environment, and marine biology and habitat)
- 7) **Keeping Active** (the importance of exercise and using our City's many parks and recreational programs to help us stay healthy)
- 8) **Beach Games** (beach relays, water alligator game, face painting, ice breakers)

Operating Plan –

000646

Australian Surf Academy

*Teen surf camp for 11 to 17 year old boys & girls
(La Jolla Shores Site #3)*

Motto: "The Ocean Belongs to No One & Welcomes Everyone"

SCHEDULE OF CLASSES:

Weeklong classes, Monday through Friday

NUMBER OF STUDENTS PER CLASS:

Australian Surf Academy will have a maximum of 50 students on land, with a maximum of 25 students in the water at any one time.

Ratio: 1 instructor for every 5 students

DAYS & HOURS OF OPERATION:

Monday-Friday Morning Session:	9:00 am – 12:30 pm (<i>water instruction begins at 9:30am</i>)
Monday-Friday Afternoon Session:	1:00 pm – 4:30 pm
Monday-Friday All Day Session:	9:00 am – 4:30 pm (<i>water instruction begins at 9:30am</i>)

- No Classes on July 4th

PRICE LIST:

Half-Day Session (Morning or Afternoon):

\$313.50 per camper

\$295.00 per camper (when you register 2-3 campers)

\$275.00 per camper (when you register 4 or more campers)

Full-Day Session:

\$550 per camper

\$470 per camper (when you register 2 or more campers)

SUMMARY OF MATERIALS COVERED IN CLASS:

The Surf Instructors at the Australian Surf Academy are from Australia and are here to give a different perspective to surfing and the surfing culture. In Australia surfing is considered a national sport and is offered in most coastal schools as part of Physical Education. The surf coaches from Australia are among

000647

1. 20 minute - Land lecture discussing Ocean Safety, Ocean Awareness, Surfing Etiquette, Parts of the Surfboard
2. Students suit up, apply sunscreen
3. Students are divided into groups of 5 with matching rashguards
4. Review conditions
5. Review on how to get in the surf, 5 practice 'pop ups' before entering surf
6. Correct techniques in the surf
7. Take 5 minute break with the students on the sand (review what they have learned)
8. Back in water and show students how to paddle
9. Explain that, in surfing, as with all sports, there are rules. They are not written down, but you must learn them- the beauty is that the rules apply EVERYWHERE around the world
10. Finish lesson, review on what they have learned and experienced

EXHIBIT C
Surf Concession Requirements

The following requirements are subject to revision at any time by the CITY:

1. **Maximum number of participants/boards on the beach and in the water**
A maximum of 50 students per Site may be on the beach at any one time. Of those fifty students, a maximum of twenty-five students per group may be in the water at any one time.
2. **Identifying Markers**
Instructors must wear red rashguards with CONCESSIONAIRE's name. Students must wear a color specific rashguard with CONCESSIONAIRE's name. Both student and instructor rashguards are to be worn at all times while in the water. The CITY-issued sign with the CONCESSIONAIRE's name must be clearly posted at each Site, whenever classes are in progress.
3. **Student to instructor ratios.**
For every five students on the beach or in the water, one instructor must be present. Anytime students are in the water at least one American Red Cross certified instructor must be present and supervising the class.
4. **Beach Access**
CONCESSIONAIRE shall not exclude the public from any Site. Beach access must be kept clear at all times. Surfboards must be kept in a position that does not obstruct beach access.
5. **Concession Site/Location**
Surf CONCESSIONAIREs must operate from their assigned Site on the beach sand only. CONCESSIONAIREs may meet and escort participants from the parks facilities, parking lots and/or nearest street but may not set up any concession operations in the park.
6. **Equipment**
All CONCESSIONAIREs that provide equipment to students must provide a soft foam surfboard with a leash; hardboards must have nose guard and tail guard protection.
7. **CPR and First Aid**
All surf instructors must take and pass "American Red Cross Lifeguard Training and CPR for the Professional Rescuer. This is a 28.5 hour course that provides training in 'surveillance skills to help you recognize and prevent injuries, rescue skills – in the water and on land, first aid training and professional rescuer CPR...' Additionally, an American Red Cross first aid kit, approved by a City of San Diego Lifeguard, must be onsite at

all times. Prior to the initial class, the operator must arrange with the lifeguard for an initial equipment and first aid safety inspection."

8. Waivers

The CONCESSIONAIRE must have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach which arise from or are in any manner connected with the services provided to the participants under this Agreement.

9. Minimum Age Requirements

The minimum age for an instructor is eighteen (18) years of age.

10. EMERGENCY RESPONSE PLAN FOR SURF CONCESSIONS

The following plan is the minimum level of response and readiness for Surf Concessions during emergency situations. CONCESSIONAIREs are required to read the plan and cover all aspects of the plan with each employee working on the beach under this Concession Agreement.

Ocean Conditions

Ensure that the ocean conditions are safe to conduct class based on the skill levels of the instructor and the students.

General Rescue Procedures for Water Emergencies

1. Survey the scene.
2. The rescuer should consider his/her level of rescue skill prior to attempting a rescue.
3. Ensure proper use of rescue equipment.
4. Safely approach and determine if the victim is distressed.
5. Perform and rescue based on American Red Cross training.
6. Move the victim to safety.
7. Remove the victim from the water.
8. Perform a primary survey.
9. If an emergency exists, ensure that someone activates 911 and requests San Diego Lifeguard assistance.
10. Provide first aid until emergency medical services (EMS) arrive.
11. If other instructors and students are in the water, they should be directed to the beach until the emergency is clear. Other instructors should provide assistance as needed.

General Rescue Procedures for Land Emergencies

Survey the scene.

Approach victim when it is safe for the rescuer.

Perform a primary survey.

If an emergency exists requiring EMS, activate the 911 system and ensure paramedics and San Diego Lifeguard are responding.

Provide emergency care until EMS arrives.

Cellular Communications

All surf concessions shall keep a fully charged and functioning cellular phone on the beach in a location where it can be immediately accessed in case of emergency.

Emergency Signals

Pre-designated signals will be used to communicate with instructors and other surf-camp personnel in the event emergency assistance is needed. **WHISTLES** will be immediately available to all instructors and surf camp personnel. One hand or any piece of equipment being waved overhead from side to side, or three short whistle blasts will indicate that an emergency exists and immediate assistance is needed. One hand placed on the top of the head will indicate that everything is all clear. Instructors and other surf camp personnel will be diligent to look for any signs and signals of distress when they are at the beach.

Any emergency signal observed by an instructor or any surf camp personnel will cause the immediate activation of the emergency response plan.

Accidents, Injuries and Incident Slips

In addition to the requirements under 16.G. of this Agreement, CONCESSIONAIRE shall notify the lifeguard supervisor on duty, as soon as feasible, of any accident or injury occurring in the operation of the Concession, regardless of severity. All rescues and medical aids involving surf camp students, instructors or other personnel will be documented on company incident slips.

**CITY OF SAN DIEGO
CONCESSION PERMIT**

THIS CITY OF SAN DIEGO CONCESSION PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and MENEHUNE SURF, INC. ("CONCESSIONAIRE"), to be effective upon execution by the parties and approval by the San Diego City Attorney (the "Effective Date"), as follows:

1. Incorporated Documents. This Permit is created pursuant to the Surf School/Camp REQUEST FOR PROPOSAL ("RFP") issued by the Real Estate Assets Department (December 11, 2007), CONCESSIONAIRE'S proposal in response to the RFP, dated January 29, 2008. The Operating Plan, submitted by CONCESSIONAIRE as part of its proposal, is attached hereto as Exhibit A and incorporated herein. Also attached and incorporated herein are the following documents: Exhibit A, Site Map; and Exhibit C, Surf Concession Requirements.
2. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to CONCESSIONAIRE, its employees, agents and contractors to operate surf instruction concessions ("Concessions") within CITY beach sites ("Sites") designated by the City of San Diego ("CITY"). The locations of the Sites included under this Permit are referenced below and more specifically, designated on the attached Exhibit A. However, any of the Sites named below are subject to change at CITY'S discretion.

Area/Beach	Site
La Jolla Shores – Northern Area Exhibit A-1	Site 4
Mission Beach – Southern Area Site 3 Exhibit A-2	N. of the S. Mission Beach Lifeguard Tower

Any of the above Sites may be deleted at any time by CITY upon thirty (30) days written notice to CONCESSIONAIRE. If an alternate site is not available, a proportionate amount of the minimum fixed concession fee (as specified in Section 10.B.) shall be waived for the deleted Site.

3. Use of Sites. This Permit is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate surf instruction concessions serving the general public under the terms and conditions of this Permit. No solicitation or marketing is permitted on City beaches. Renting or selling of beach equipment or other merchandise is not allowed under this Permit.
4. Maximum Days and Hours of Operation. Maximum hours of land-based operations are 8:30 a.m. - 5:00 p.m. Water instruction is permitted from 9:00 a.m. to 4:00 p.m. All Concessions must be vacated by 5:00 p.m. daily. The CITY reserves the right to change the days and/or hours of operation at its discretion. Operations are permitted seven days a week with the following exceptions:

- A. Under no circumstances are operations permitted on the 4th of July holiday.
- B. Special Events. Unless otherwise authorized by the CITY Manager, CONCESSIONAIRE shall have no rights within certain areas of its Concession Sites or designated portions thereof during days in which special events are scheduled by CITY in these areas. CITY shall give CONCESSIONAIRE advance written notice of any such special events.
5. Competent Management. Throughout the term of this Permit, CONCESSIONAIRE shall provide competent management of the Sites for the permitted uses to the satisfaction of the City Manager. CONCESSIONAIRE covenants to operate the Concession for the above-specified purposes and diligently conduct the operations to produce a reasonable and substantial gross income.
6. Term. The term of this Permit ("Term") shall be 64 months commencing on June 1, 2008, and expiring on September 30, 2013. This Permit may be terminated at any time by either party upon ninety (90) days prior written notice to the other party.
7. Holding Over. Any use of the Concession Sites by CONCESSIONAIRE after the expiration of this Permit is not permitted. Any extension of the term of the Permit beyond 64 months shall require approval of CITY Council.
8. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of such termination of this Permit. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY'S termination of this Permit.
9. Special Provisions
- A. Operating Plan. The Operating Plan(s) for June 2008 through May 2009 submitted with the CONCESSIONAIRE's response to the CITY'S Request for Proposal, shall be revised by CONCESSIONAIRE, if required by CITY to meet CITY'S approval, and the final CITY approved Plan(s) shall be incorporated into this Permit as Exhibit B. Beginning June 1, 2009, and for every 12 months thereafter, the CONCESSIONAIRE shall provide the CITY with an Operating Plan for the coming quarter for the CITY'S approval. All Operating Plans submitted to the CITY should be consistent with the format and content of the Plans included as Exhibit B. CITY shall have the right to approve or disapprove the proposed plan. Once approved, CONCESSIONAIRE shall not make any changes to the Plan without prior written approval of CITY. At all times, the CONCESSIONAIRE shall ensure that all operations permitted under this Permit comply with the Surf Instruction Requirements incorporated herein as Exhibit C.

- B. Exclusiveness of Permit and Unauthorized Vending. In addition to special events described in Section 4.B., CITY may, during the term of this Permit, enter into Permits with other CONCESSIONAIRES to provide surf instructions during times not scheduled for operations in the approved Operating Plan(s) at the Sites permitted in this Permit. However, CITY, by granting this Permit to CONCESSIONAIRE, makes no warranty that the Sites shall be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities shall be maintained.
- C. Concession Sites. On each Site included in this Permit, CONCESSIONAIRE shall erect no improvements except one shade structure no greater than twenty (20) feet by twenty (20) feet or, no more than two shade structures no greater than ten (10) feet by ten (10) feet in size, or as shall, in the opinion of the CITY be needed to adequately serve the public. CITY reserves the right to request that the CONCESSIONAIRE modify the dimensions of the structure. The Sites must be designed and maintained so as to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Sites by the CONCESSIONAIRE must be approved by CITY and shall not remain on location after permitted hours of operation, unless prior approval of CITY is obtained. If in the opinion of CITY, the number of Sites within any Concession covered under this Permit at any time falls short of or exceeds the number of Sites needed to adequately serve the public, CONCESSIONAIRE shall, without liability to the CITY, upon receipt of notice from CITY, adjust the number of Sites to the number specified by CITY as adequate to serve the public. Until such time as CITY requires CONCESSIONAIRE, or agrees to a request from CONCESSIONAIRE, to increase or decrease the number of Sites CONCESSIONAIRE shall operate no more and no fewer than the Sites designated in this Permit. At each Site, CONCESSIONAIRE shall occupy no more than two and no less than one area of the dimensions specified herein.
- D. Improvements. Upon expiration or termination of this Permit, any and all improvements, trade fixtures, structures, and installations or additions to the Sites now existing or constructed on the Sites by CONCESSIONAIRE shall be deemed to be part of the Sites and shall become CITY'S property free of all liens and claims. All personal property remaining on the Sites after expiration or termination shall also become the property of CITY.
- E. Maintenance of Sites. CONCESSIONAIRE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Sites clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about said spaces to the satisfaction of CITY and at CONCESSIONAIRE's sole cost. All Sites must be cleaned up nightly by CONCESSIONAIRE or more often, as required.
- F. Standard of Employees. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations of the Concession in a creditable manner. CONCESSIONAIRE shall thoroughly train its employees in their duties and shall regularly monitor them to ensure that they behave in a courteous manner, do not disturb the quiet enjoyment of other beach users, and otherwise comply with all of the Surf Instruction Requirements in Exhibit C of this Permit.

10. Fees.

- A. Percentage Fees. Percentage fees will be calculated on a calendar month basis and will consist of ten percent (10.00%) of the gross income resulting from the operations permitted under this Permit. The City Manager, in his sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, Use of Sites, as may be approved in writing by the City Manager prior to the commencement of any additional service or operation. Provided however, any activity conducted on the Sites without the prior written approval of the City Manager shall be subject to the requirements of Section 10.E., Unauthorized Use Charge.
- B. Minimum Fees. The annual Minimum Fee established for the first year following the effective date of this Permit is ten-thousand five-hundred dollars (\$10,500), which is (\$875) on a monthly installment basis for Site 4 - La Jolla Shores. The annual Minimum Fee established for the first year following the effective date of this Permit is six-thousand dollars (\$6,000), which is five-hundred dollars (\$500) on a monthly installment basis for Site 3 - N. of the S. Mission Beach Lifeguard Tower.

If the Minimum Fee is greater than the percentage fee on a calendar month basis, one-twelfth (1/12) of the Minimum Fee is required to be paid for that month. Minimum Fees are to be paid in monthly installments on or before the day of the calendar month when percentage fees are due pursuant to Section 10.I., Time and Place of Payment. In the event that the combined total percentage fee payments and monthly installments of the Minimum Fee during any Permit year equal or exceed the required Minimum Fee for that year, for the balance of that year, CONCESSIONAIRE shall discontinue paying monthly installments of the Minimum Fee until the beginning of the next Permit Year. If in any Permit Year, Minimum Fees paid plus Percentage Fees paid exceed the annual Minimum Fee and also exceed the fee which would have been paid if the Percentage Fee had been paid on total gross income, the excess over the total fee owed shall be credited against the next payable fee as it becomes due. It is the intent of this provision that CONCESSIONAIRE shall pay monthly installments of the annual Minimum Fee as a guarantee against the Percentage Fee requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

Minimum Fee Adjustment. Effective at the beginning of the first day of the 13th, 25th, 37th, 49th and 61st month of this Permit, the annual Minimum Fee shall be eighty percent (80.00%) of the annual average of actual rents paid in the Initial Term plus any option terms exercised under this Permit. The annual average shall then be divided by twelve (12) to establish the new monthly Minimum Fee. It is recognized that the adjustments shall be calculated by the CITY upon completion of payments due for the preceding year in order to determine the amount of the Minimum Fee for the option period. Until such calculations are completed, CONCESSIONAIRE shall continue paying monthly Minimum Fees at the prior rate. Any additional fees determined by the adjustment to be due for the months previously paid at the prior

rate shall be paid to the CITY within thirty (30) days following written notice. In no event shall the Minimum Fee Adjustment result in a decrease in the Minimum Fee requirement in effect immediately prior to the adjustment date.

- C. Annual Percentage Adjustment to Minimum Fee. If CONCESSIONAIRE has not paid percentage fees during the previous 12 month period, then the Minimum Fee shall increase to one-hundred five (105.00%) of the previous year's Minimum Fee.
- D. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any concession fees when due, CONCESSIONAIRE will pay, in addition to the unpaid concession fees, a fee of \$25.00. If the fees are still unpaid at the end of the fifteen (15) days, CONCESSIONAIRE shall pay a fee of \$50.00, which is mutually agreed by the parties to this Permit to be appropriate to compensate the CITY for loss resulting from concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- E. Unauthorized Use Charge. CONCESSIONAIRE shall pay CITY fifty percent (50.00%) of the gross receipts for any service or use that is not permitted by this Permit. This payment is subject to the due date provided in this Permit for minimum guaranteed fees payments and the provision for delinquent concession fees payments and the provision for delinquent concession fees. The existence of the fifty percent (50.00%) charge in this clause and the payment of this charge or any part of it, do not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default CONCESSIONAIRE for participating in or allowing any unauthorized use.
- F. Gross Income. "Gross income" or "gross receipts", as used in this Permit shall include all income resulting from the Concession from whatever source derived whether received or to become due. Provided; however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by CONCESSIONAIRE in computing gross income. Gross income shall not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The percentage concession fees shall be calculated and paid by CONCESSIONAIRE on the basis of gross income whether the income is received by CONCESSIONAIRE or by any permittee or licensee, or their agents, and all gross income received by any permittee, licensee, or other party as a result of occupancy or operation of the Site(s) shall be regarded as gross income of CONCESSIONAIRE for the purpose of calculating the percentage concession fees required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by or pursuant to this Permit.

G. Inspection Of Records.

- i. Records. CONCESSIONAIRE shall, at all times during the Permit term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site(s). The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, class lists, or other documents as necessary to allow CITY to easily determine the gross income. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day. In the event of admission charges or concession rents, CONCESSIONAIRE shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is approved by the CITY.
- ii. Financial Statements. Within sixty (60) days after the end of the Initial Term and any subsequent option terms, CONCESSIONAIRE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of concession percentage fees paid CITY for the year are classified according to the categories of business established for any percentage concession fees and for any other business conducted on or from the Site(s). The statement shall be signed by CONCESSIONAIRE and Financial Representative of CONCESSIONAIRE attesting to the accuracy thereof, which shall be legally binding upon CONCESSIONAIRE.
- iii. Right to Inspect. All CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 10.G.(i), will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Site(s). The CITY, at its discretion, shall have the right to inspect and audit the business of CONCESSIONAIRE, its agents, permittees, and licensees operating on, and in connection with, the Site(s) as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the requirements of this Permit. At CITY'S request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Permit information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.

- iv. Audit Cost. The full cost of the CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case CONCESSIONAIRE agrees to pay CITY'S cost of audit(s):

The audit(s) reveal an underpayment of more than five percent (5.00%) or more than \$10,000.00, which ever is less, between the concession fees due as reported and paid by CONCESSIONAIRE, pursuant to this Permit and concession fees determined by the audit(s).

CONCESSIONAIRE has failed to maintain complete and true books, records, accounts, and supporting documents in strict accordance with this section.

Any underpayment of concession fees less than five percent (5.00%) revealed by the audit may be paid within thirty (30) days written notice from the CITY without penalty, otherwise, CONCESSIONAIRE shall incur interest charges on the delinquent amount as defined in Section 10.D., DELINQUENT CONCESSION FEES. CITY will credit any overpayment against incoming concession fees. Any overpayment determined after the end of this Permit will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- H. Default. CONCESSIONAIRE's failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Permit, a breach of this Permit and cause for termination.
- I. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Income subject to percentage fees was earned. Checks shall be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
- J. Security Deposit. The CONCESSIONAIRE shall deliver to CITY with the executed copies of this Permit, a good faith deposit in the amount of two thousand five hundred dollars (\$2,500.00). All or any portion of the principal sum shall be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this Permit by CONCESSIONAIRE, CONCESSIONAIRE's successors or assignees, or for payment of expenses incurred by CITY as a result of

CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Permit. If at the end of the term of this Permit, CONCESSIONAIRE has performed all of the provisions of the Permit, the deposit or any remaining balance shall be returned to the CONCESSIONAIRE without interest. The security deposit may be increased by CITY proportionate to any increase in Minimum Fees. CONCESSIONAIRE shall maintain the security deposit throughout the Term. **Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Permit, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**

- i. Utilization. If CITY utilizes all or any portion of the security deposit, upon 10 days prior written notice, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
 - ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure CONCESSIONAIRE'S obligations under this Permit.
 - iii. Return. Provided CONCESSIONAIRE is not in breach or default of this Permit, CITY shall return the security deposit, or any balance thereof, to CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Permit.
11. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the City Manager, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the City Manager's sole and absolute discretion, unless otherwise expressly provided.
 12. Acceptance of Sites. CONCESSIONAIRE represents and warrants that it has independently inspected the Sites and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Sites. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Permit. CONCESSIONAIRE further acknowledges that the Sites are in the condition called for by this Permit, that CITY has performed all work, if any, related to the Sites and required by this Permit, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Sites, including without limitation the presence of any hazardous substances.
 13. Maintenance of the Sites. CONCESSIONAIRE shall, at CONCESSIONAIRE'S sole cost and expense and to CITY'S satisfaction, maintain the Sites in a decent, safe, healthy and sanitary condition at all times during the Term.

14. Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Sites in a creditable manner.
15. Inspection. CITY may, at all times upon prior notice, enter and inspect the Sites.
16. Insurance. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a current certificate of insurance for: (1) Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of Two Million Dollars (\$2,000,000).
 - A. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 - B. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Permit.
 - C. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
 - D. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
 - E. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Permit, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Sites, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
 - F. Modification. To assure protection from and against the kind and extent of risk existing on the Sites, CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Permit.

- G. Accident Reports. CONCESSIONAIRE shall report to CITY any accident causing more than Five Thousand Dollars (\$5,000) worth of property damage or any serious injury to persons on the Sites. Such report shall be delivered to CITY within five (5) days of such accident and shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- H. Failure to Comply. If CONCESSIONAIRE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. CONCESSIONAIRE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify CONCESSIONAIRE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. CONCESSIONAIRE shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice.
- Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**
17. Indemnification. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
18. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in CONCESSIONAIRE'S use of the Sites, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

19. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Permit from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.
20. Drug-free Workplace. CONCESSIONAIRE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Sites and specifying the actions that will be taken against employees for violations of the prohibition; and
 - B. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. CONCESSIONAIRE'S policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
21. Disabled Access Compliance. CONCESSIONAIRE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
22. CONCESSIONAIRE'S Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE'S occupancy, use, development and maintenance of the Sites and any damages to the improvements on, under, or in the vicinity of the Sites resulting directly or indirectly thereby.
23. No Nuisance. CONCESSIONAIRE shall not use the Sites in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
24. No Assignment. CONCESSIONAIRE shall not assign any rights granted by this Permit or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.

25. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Sites, CONCESSIONAIRE shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE'S cost.
26. Advertisement and Marketing. Any advertising or marketing which reference the City of San Diego may not be distributed by the CONCESSIONAIRE without the advanced written approval of the CITY. If CONCESSIONAIRE uses the City of San Diego in any context to promote its business operations without prior written approval by CITY, CONCESSIONAIRE will be considered to be in default. No advertising or marketing materials of any kind may be posted or distributed on any City beach without the advanced written approval of the CITY.
27. Encumbrances. CONCESSIONAIRE shall keep the Sites free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Sites, including without limitation CONCESSIONAIRE'S failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
28. Defaults and Remedies.
- A. Default by CONCESSIONAIRE. In the event that:
- i. CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Permit to be performed or fulfilled by CONCESSIONAIRE and shall fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
 - ii. CONCESSIONAIRE shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or
 - iii. CONCESSIONAIRE shall make a general assignment for the benefit of creditors;
- then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate this Permit and all rights of CONCESSIONAIRE and of all persons claiming rights through CONCESSIONAIRE to the Concession Sites or to possession thereof, and

CITY may then enter and take possession of the Sites and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided; however, in the event that any default described in Part (1)a. of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY shall not terminate this Permit pursuant to the default if CONCESSIONAIRE immediately commences to cure the default and diligently pursues cure to completion. In any event, either party may terminate this Permit without cause by giving ninety (90) days written notice of intent to terminate to the other party.

B. Abandonment by CONCESSIONAIRE. Even though CONCESSIONAIRE has breached the Permit and abandoned the Concession Site(s), this Permit shall continue in full force and effect for so long as CITY does not terminate this Permit, and CITY may enforce all its rights and remedies under this Permit, including, but not limited to, the right to recover the concession fee as it becomes due, plus damages. For purposes of this section, the following do not constitute a termination of CONCESSIONAIRE's right to possession or operation:

- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Permit.
- ii. The appointment of a receiver upon initiative of CITY to protect CITY'S interest under this Permit.

29. Damages. Damages which CITY may recover in the event of default under this Permit include the worth, at the time of the award, of the amount by which the unpaid concession fee for the balance of the term after the date of award or for any shorter period of time specified in this Permit exceeds the amount of concession fee loss for the same period that the CONCESSIONAIRE proved could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

30. Compliance with Laws. CONCESSIONAIRE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites.

31. Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Sites, including any licenses or permits. CONCESSIONAIRE acknowledges that this Permit may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE shall pay all such possessory interest taxes. CONCESSIONAIRE'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Permit.

32. Hazardous Substances. CONCESSIONAIRE shall not allow the installation or release of hazardous substances in, on, under, or from the Sites. CONCESSIONAIRE and CONCESSIONAIRE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Sites without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.

- A. Remediation. If any release of a hazardous substance occurs, CONCESSIONAIRE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
- B. Indemnity. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- C. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Sites, CONCESSIONAIRE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, CONCESSIONAIRE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Sites.
- D. Environmental Assessment. At CITY'S option upon expiration or termination of this Permit, an environmental assessment of the Sites shall be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE'S sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Sites, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with

recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and CONCESSIONAIRE shall pay all costs and expenses therefor.

33. Waiver. CITY'S failure to insist upon the strict performance of any of CONCESSIONAIRE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Sites is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
34. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
35. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
36. Number and Gender. Words of any gender used in this Permit shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
37. Captions. Section headings and captions shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Permit. The numbers of the paragraphs and pages of this Permit may not be consecutive. Such lack of consecutive numbers shall have no effect on the enforceability of this Permit.
38. Entire Permit. This Permit constitutes the entire Permit between the parties and supersedes any and all prior understandings, representations, warranties and Permits between them and pertaining to this Permit and CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
39. Legal Proceedings. If either party commences legal proceedings to enforce or interpret any right or obligation under this Permit, the prevailing party shall be entitled to an award of costs related thereto, including without limitation reasonable attorney fees and court costs.

40. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

THE CITY OF SAN DIEGO

Real Estate Assets Department

Attention: Director, Real Estate Assets Department

1200 Third Avenue, Suite 1700 (MS 51A)

San Diego, California 92101

MENEHUNE SURF, INC.

Darren Fulhorst

7486 La Jolla Blvd., Ste 553

La Jolla, CA 92037

41. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites.
42. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Permit shall be deemed to refer to "the Mayor or his/her designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

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000667

43. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Permit, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
James Barwick, Director
Real Estate Assets Department

Date: 4/08/08

MENEHUNE SURF, INC., CONCESSIONAIRE

BY: D. Fulhorst
Darren Fulhorst

APPROVED AS TO FORM AND LEGALITY:

Effective Date: _____

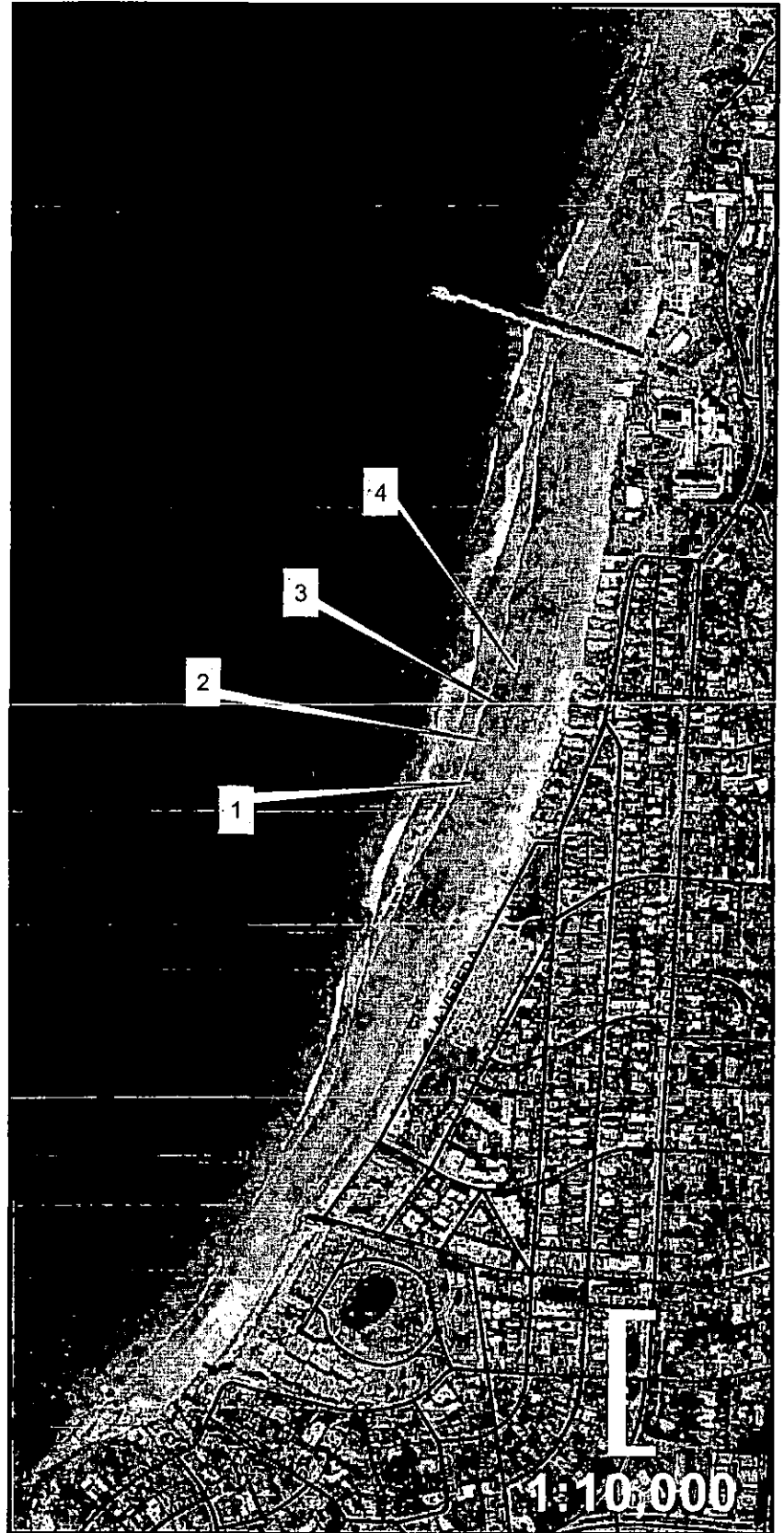
MICHAEL J. AGUIRRE, City Attorney

BY: _____
_____, Deputy City Attorney

000668

EXHIBIT A-1

Northern Area Sites (La Jolla Shores)



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EXHIBIT A-2

Southern Area Sites (Mission and Ocean Beaches)

000669

Site 1 Pismo Court

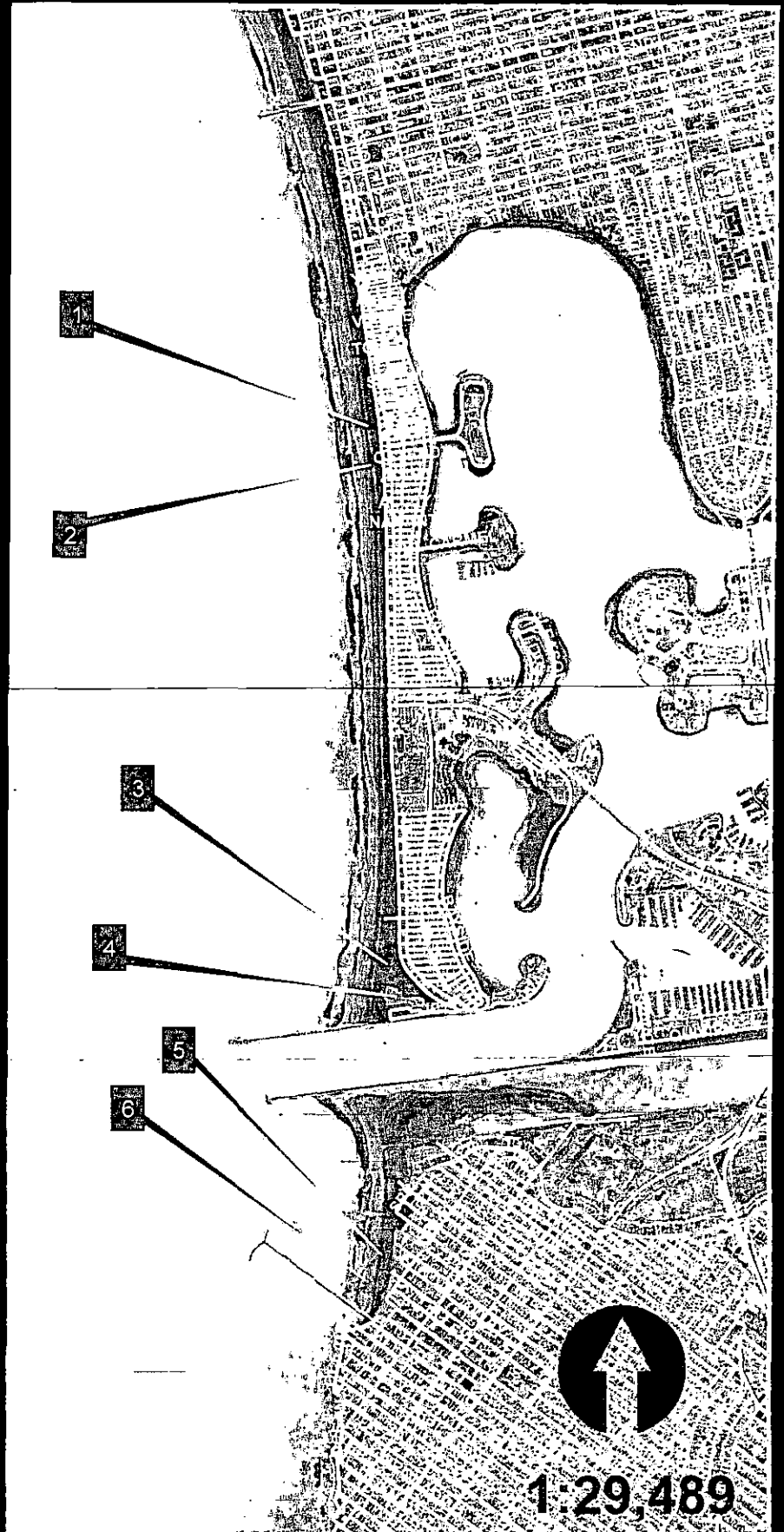
Site 2 Ostend Court

Site 3 North of the South Mission
Beach Lifeguard Tower

Site 4 South of the South Mission
Beach Lifeguard Tower

Site 5 Santa Monica Avenue

Site 6 Newport Avenue



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000670

EXHIBIT B

OPERATING PLAN – MENEHUNE SURF AND OCEAN GIRL

LA JOLLA SHORES
SITE 4

&

MISSION BEACH –
N. OF THE S. MISSION BEACH LIFEGUARD TOWER

DESCRIPTION OF PROPOSED OPERATIONS FOR THE MENEHUNE SURF SCHOOL

000671

We limit the enrollment of any of our Menehune surf camps or clinics to 8 or less. This creates a safer surf environment in which to learn, particularly once we enter the water. A smaller class size also increases the learning potential because it allows the instructor more one on one time with each individual student. This hands-on, more personal approach helps to replace shyness with self-confidence; and we've found that the greater the attention, the greater the excitement to learn something new.

There are always 2 instructors hired to teach any of our surf camps or clinics, and a 1:4 instructor to student ratio is strictly maintained at all times, both on the beach and once we enter the water. There is always at least one "Head" instructor teaching any of the camps or clinics. Most of our "Head" instructors are local area schoolteachers employed throughout the City and County of San Diego. These highly trained "professional" adults are that much more inclined to effectively teach our surf instructional program, and fulfill our obligation of "safe, quality surf instruction."

All of our instructors are accomplished surfers who are First Aid and CPR certified, and we always have an American Red Cross Certified Lifeguard on site at all times.

Due to the increased popularity and success of our camps and clinics, we often times operate 3 "separate" groups of 8 participants at one time at one site. These 3 groups are differentiated by age groups, and/or representative of different camp programs. Despite tripling our enrollment from the 2003 to 2004 summer camp seasons, and sustaining a 35% increase in our camp enrollment this past year (2007); this "limited enrollment", in itself, has been an effective way to maintain the integrity, quality, and safety of our original program, (as can be evidenced in the "Letters of Recommendation" chapter of this RFP).

Class Title: **All-Day Summer Surf Camp**

Maximum # of students per class: 8

Instructor to student ratio: 1:4

Age group of students: 5-7, 8-12, 13-17 (years of age)

Days of operation: Monday - Friday

Schedule: camps run weekly beginning June 9th and ending August 29th

Hours: 9:00-2:00

Price: \$510.00 per camper

\$470.00 per camper (when you sign up 2 or more campers)

000672

Material Covered: Each 5 hour camp is divided into 40 minute "blocks" of surf/water time, and 20 minute interpretive seminars conducted on the beach, each and every day, Monday through Friday. A half hour "break" is taken for lunch (students bring their own).

These interpretive seminars cover such topics as:

- *surf technique and balance exercises
- *water safety (including "rip tide" identification and reaction, natural and manmade hazards)
- *surfing etiquette
- *wave and tidal formation
- *surf history
- *surfboard construction, evolution, and repair
- *marine life, shorebird and seashell identification
- *conservation, and coastal preservation.

We always gear our programs towards safety first, surf instruction second, and then all of these other "mini-lessons" are intended to instill in the student a sense of wonder and curiosity about the ocean at large, and what they can do to help maintain and preserve what we consider to be "San Diego's greatest natural resource." This sense of responsibility and conservation is further instilled with a 20-30 minute "Interpretive Seminar" provided for the campers once a week by the local Chapter of the Surfrider Foundation (please refer to "Exhibit A" of this chapter for further details).

Our All -Day Summer Surf Camp is offered for 3 different ability levels. A description of each ability level and the differences and prerequisites for each are as follows:

Level I: Student has never been on a surfboard. Student has been on a surfboard, but still has difficulty standing up, and catching his/her own waves.

Prerequisite: strong swimming skills, and a comfort level in the ocean.

Level II: Student can stand up consistently, but doesn't know how to turn. Ready to make the move from the "whitewater," to the "outside," and try and paddle into waves that haven't broken yet.

Prerequisite: strong swimming skills, and completion of at least 1 week of a Level I surf camp.

Level III: Student can stand up and execute a bottom turn. Student is able to paddle out through the whitewater and paddle into his or her own waves. Student wants to learn more advanced methods of surfing, such as cutbacks, roundhouses, and aeriels.

Prerequisite: strong swimming skills, and completion of at least 1 week of a Level II surf camp.

Class Title: **Half-Day Ocean Awareness Camp**

Maximum # of students per class: 8

Instructor to student ratio: 1:4

Age group of students: 8-12, 13-17 (years of age)

Days of operation: Monday - Friday

Schedule: camps run weekly beginning June 9th and ending August 29th

Hours: 9:00-12:00 and 1:00 - 4:00

Price: \$330.00 per camper

000673

\$315.00 per camper (when you sign up 2-3 campers)

\$295.00 per camper (when you sign up 4 or more campers)

Menehune Surf's **Ocean Awareness Camp** offers an innovative educational experience for kids ages 8-17. This week long program infuses surf, kayak, and snorkel instruction with guided explorations of the marine and terrestrial ecosystems found at La Jolla Shores. Observe marine mammals in their natural habitats while paddling a kayak! Explore the wonders of the kelp forest wearing a mask and snorkel! Investigate the organisms living in the tide pools near the Scripps Pier! Check out coastal bird species while mastering the art of surfing! Each camp day incorporates exciting ocean activities with unique, hands-on lessons that promote ocean awareness and the development of life-long skills.

As always, safe, quality instruction is a priority with each camp led by two experienced instructors and limited to eight participants. All instructors are first aid and CPR certified, have experience working with children, and complete an extensive training program before the season begins. Instructors are hired based on related skills, character, personality, attitude, and leadership ability. These smaller group sizes enable instructors to create learning environments where kids feel comfortable being themselves and trying new things. With a week full of cool ocean based adventures kids have fun while connecting with nature and their peers!

Daily interpretive programs cover the following:

- *water safety (including "rip tide" identification and reaction, natural and manmade hazards)
- *kayak paddling techniques
- *snorkeling techniques
- *surf technique and balance exercises
- *surfing etiquette
- *wave and tidal formation
- *surf history
- *surfboard construction, evolution, and repair
- *marine life, shorebird and seashell identification
- *conservation, and coastal preservation.

The Ocean Awareness Camp instills in the student a sense of wonder and curiosity about the ocean at large, and what they can do to help maintain and preserve what we consider to be "San Diego's greatest natural resource." This sense of responsibility and conservation is completed with a 20-30 minute "Interpretive Seminar" provided for the campers once a week by the local Chapter of the Surfrider Foundation (please refer to "Exhibit A" of this chapter).

Class Title: **All-Day Ocean Awareness Camp**

Maximum # of students per class: 8

Instructor to student ratio: 1:4

Age group of students: 8-12, 13-17 (years of age)

Days of operation: Monday - Friday

Schedule: camps run weekly beginning June 9th and ending August 29th

Hours: 9:00-2:00

Price: \$535.00 per camper

000674 \$495.00 per camper (when you sign up 2 or more campers)

Menhune Surf's **Ocean Awareness Camp** offers an innovative educational experience for kids ages 8-17. This week long program infuses surf, kayak, and snorkel instruction with guided explorations of the marine and terrestrial ecosystems found at La Jolla Shores. Observe marine mammals in their natural habitats while paddling a kayak! Explore the wonders of the kelp forest wearing a mask and snorkel! Investigate the organisms living in the tide pools near the Scripp's Pier! Check out coastal bird species while mastering the art of surfing! Each camp day incorporates exciting ocean activities with unique, hands-on lessons that promote ocean awareness and the development of life-long skills.

As always, safe, quality instruction is a priority with each camp led by two experienced instructors and limited to eight participants. All instructors are first aid and CPR certified, have experience working with children, and complete an extensive training program before the season begins. Instructors are hired based on related skills, character, personality, attitude, and leadership ability. These smaller group sizes enable instructors to create learning environments where kids feel comfortable being themselves and trying new things. With a week full of cool ocean based adventures kids have fun while connecting with nature and their peers!

Daily interpretive programs cover the following:

- *water safety (including "rip tide" identification and reaction, natural and manmade hazards)
- *kayak paddling techniques
- *snorkeling techniques
- *surf technique and balance exercises
- *surfing etiquette
- *wave and tidal formation
- *surf history
- *surfboard construction, evolution, and repair
- *marine life, shorebird and seashell identification
- *conservation, and coastal preservation.

The Ocean Awareness Camp instills in the student a sense of wonder and curiosity about the ocean at large, and what they can do to help maintain and preserve what we consider to be "San Diego's greatest natural resource." This sense of responsibility and conservation is completed with a 20-30 minute "Interpretive Seminar" provided for the campers once a week by the local Chapter of the Surfrider Foundation (please refer to "Exhibit A" of this chapter).

Class Title: **Parent/Child Weekend Clinic**

Maximum # of students per class: 8

Instructor to student ratio: 1:4

Age group of students: 5 on up

Days of operation: Saturday and/or Sunday

Schedule: clinics run one or two days, Saturday and/or Sunday

Hours: 9:00-11:00, 11-1:00, 1:00-3:00, 3:00-5:00

Price: \$140.00 per person (for the 2 day, Saturday and Sunday clinic)

000675 \$ 80.00 per person (for the 1 day, Saturday or Sunday clinic)

This is an introductory course designed to provide parents and their children with enough surfing and safety know-how to confidently continue surfing together on their own.

Spending time at the beach with your child is always quality time, and learning how to surf will increase both the quality and the time.

Interpretive program will include:

- *water safety (including "rip tide" identification and reaction, natural and manmade hazards)
- *surfing etiquette
- *wave and tidal formation
- *conservation, and coastal preservation

Class Title: **Corporate Events/Team Building Surf Seminars**

Maximum # of students per class: 20

Minimum # of students per class: 8

Instructor to student ratio: 1:4

Age group of students: adults 18 and up

Days of operation: Saturday and/or Sunday

Schedule: Seminars run one or two days, Saturday and/or Sunday

Hours: 9:00-11:00, 11-1:00, 1:00-3:00, 3:00-5:00

Price: \$120.00 per person (for the 2 day, Saturday and Sunday seminar)

\$ 100.00 per person (for the 2 day, Sat. and Sun. seminar, 16 person minimum)

\$ 60.00 per person (for the 1 day, Saturday or Sunday seminar)

\$ 50.00 per person (for the 1 day, Sat. or Sun. seminar, 16 person minimum)

Surfing is an individual sport, and yet the lessons of patience, concentration, efficiency, perseverance and reward are naturally inherent in the surf instructional program, and easily applicable in the work field...with refreshed minds come refreshing ideas. These lessons, along with a healthy activity in an outdoor setting is a great way to "let loose" and learn, and have fun with the "team."

Interpretive program will include:

- *water safety (including "rip tide" identification and reaction, natural and manmade hazards)
- *surfing etiquette
- *wave and tidal formation
- *conservation, and coastal preservation

000676

Class Title: **Private Surf Lesson Package**

Maximum # of students per class: 1

Minimum # of students per class: 1

Instructor to student ratio: 1:1

Age group of students: age 5 on up

Days of operation: any day of the week

Schedule: year round

Hours: M-F, 9:00-4:00, Sat.-Sun., 9:00-4:00

Price: \$550.00 one person, 10 hours of private 1:1 surf instruction, ages 5 and up

10 one hour private lessons. This is the best surf deal going. Take one lesson a week, and have personal surf instruction all summer long. If you are really serious about learning how to surf, this is the way to start.

Interpretive program will include:

*water safety (including "rip tide" identification and reaction, natural and manmade hazards)

Class Title: **After School Surf Camps**

Maximum # of students per class: 8

Minimum # of students per class: 4

Instructor to student ratio: 1:4

Age group of students: 5-7, 8-12, 13-17

Days of operation: any day of the week

Schedule: September 1st - October 17th

Hours: M-F, 9:00-4:00, Sat.-Sun., 9:00-4:00

Price: \$120.00 per person, for four hours of surf instruction per week

"Summer's gone, and so are the crowds...but the waves are still here and the water's warm."

Interpretive program will include:

*water safety (including "rip tide" identification and reaction, natural and manmade hazards)

*surfing etiquette

*wave and tidal formation

*conservation, and coastal preservation

DESCRIPTION OF PROPOSED OPERATIONS FOR THE OCEAN GIRL SURF SCHOOL

000677

As stated earlier, The Ocean Girl Surf School partnered with The Menehune Surf School and the Ocean Girl Surf Shop in 2004, to provide the same high level of quality surf instruction to the "all girls" surf school market. At its' inception in 2004, there was currently only one "all girls" surf school operating on City of San Diego beaches, and most of their "clients" come from "out of town." There was an obvious need from both a business and practical sense to offer an alternative to the local female population of would be surfers. Competition is always best for the consumer because it forces the need to create a better product, only in the case of surf schools; it's important to remember that it's not a product but a service we provide, and it's not consumers but students that we teach. Mass marketing is not the measure; the substance is in the surf instruction.

The Ocean Girl Surf School has enjoyed unparalleled growth, popularity, and success in the last 3 years, and has become a necessary and vital "all-girls" surf instructional opportunity for the local San Diego community and beyond.

The Ocean Girl Surf School utilizes the same Camp Directors and many of the same Head Instructors as The Menehune Surf School, adhering to the same high quality of surf instruction and offering the same camps, clinics, lessons, blueprint, and proven track record of popularity, growth, and financial success.

All of The Ocean Girl Surf School programs are designed to meet the specific needs of women and girls in what can be a highly competitive, crowded, and male dominated lineup. Ocean Girl Surf School programs are for women and girls only. All participants will have a choice of male or female surf instructors.

We limit the enrollment of any of our Ocean Girl surf camps or clinics to 8 or less. This creates a safer surf environment in which to learn, particularly once we enter the water. A smaller class size also increases the learning potential because it allows the instructor more one on one time with each individual student. This hands-on, more personal approach helps to replace shyness with self-confidence; and we've found that the greater the attention, the greater the excitement to learn something new.

There are always 2 instructors hired to teach any of our surf camps or clinics, and a 1:4 instructor to student ratio is strictly maintained at all times, both on the beach and once we enter the water. There is always at least one "Head" instructor teaching any of the camps or clinics. Most of our "Head" instructors are local area schoolteachers employed throughout the City and County of San Diego. These highly trained "professional" adults are that much more inclined to effectively teach our surf instructional program, and fulfill our obligation of "safe, quality surf instruction."

All of our instructors are accomplished surfers who are First Aid and CPR certified, and we always have an American Red Cross Certified Lifeguard on site at all times.

We often times operate 3 "separate" groups of 8 participants at one time at one site. These 3 groups are differentiated by age groups, and/or representative of different camp programs.

Class Title: **All-Day Ocean Girl Surf Camp**

Maximum # of students per class: 8

Instructor to student ratio: 1:4

Age group of students: 5-7, 8-12, 13-17 (years of age)

Days of operation: Monday - Friday

Schedule: camps run weekly beginning June 9th and ending August 29th

Hours: 9:00-2:00

Price: \$510.00 per camper

000678 \$470.00 per camper (when you sign up 2 or more campers)

Material Covered: Each 5 hour camp is divided into 40 minute "blocks" of surf/water time, and 20 minute interpretive seminars conducted on the beach, each and every day, Monday through Friday. A half hour "break" is taken for lunch (students bring their own).

These interpretive seminars cover such topics as:

- *surf technique and balance exercises
- *water safety (including "rip tide" identification and reaction, natural and manmade hazards)
- *surfing etiquette
- *wave and tidal formation
- *surf history
- *surfboard construction, evolution, and repair
- *marine life, shorebird and seashell identification
- *conservation, and coastal preservation.

We always gear our programs towards safety first, surf instruction second, and then all of these other "mini-lessons" are intended to instill in the student a sense of wonder and curiosity about the ocean at large, and what they can do to help maintain and preserve what we consider to be "San Diego's greatest natural resource." This sense of responsibility and conservation is further instilled with a 20-30 minute "Interpretive Seminar" provided for the campers once a week by the local Chapter of the Surfrider Foundation (please refer to "Exhibit A" of this chapter for further details).

Our All -Day Summer Surf Camp is offered for 3 different ability levels. A description of each ability level and the differences and prerequisites for each are as follows:

Level I: Student has never been on a surfboard. Student has been on a surfboard, but still has difficulty standing up, and catching his/her own waves.

Prerequisite: strong swimming skills, and a comfort level in the ocean.

Level II: Student can stand up consistently, but doesn't know how to turn. Ready to make the move from the "whitewater," to the "outside," and try and paddle into waves that haven't broken yet.

Prerequisite: strong swimming skills, and completion of at least 1 week of a Level I surf camp.

Level III: Student can stand up and execute a bottom turn. Student is able to paddle out through the whitewater and paddle into his or her own waves. Student wants to learn more advanced methods of surfing, such as cutbacks, roundhouses, and aerials.

Prerequisite: strong swimming skills, and completion of at least 1 week of a Level II surf camp.

Half-Day Ocean Girl Ocean Awareness Camp Schedule:

000679

Monday

9:00AM: Arrival, Welcome, Introductions, Safety then... Get Ready to Surf!
9:30AM: Surf Session #1
10:30AM: Snack Break
10:50AM: Surf Session #2
12:00PM: End of Camp Day

Tuesday

9:00AM: Arrival
9:15AM: Kayak Adventure
12:00PM: End of Camp Day

Wednesday

9:00AM: Arrival
9:30AM: Surf Session #1
10:30AM: Snack Break
10:50AM: Surf Session #2
12:00PM: End of Camp Day

Thursday

9:00AM: Arrival
9:15AM: Kayak Adventure
12:00PM: End of Camp Day

Friday

9:00AM: Arrival
9:30AM: Surf Session #1
10:30AM: Snack Break
10:50AM: Surf Session #2
12:00PM: End of Camp Day

000630 All-Day Ocean Girl Ocean Awareness Camp Schedule:

Monday

9:00AM: Arrival, Welcome, Introductions, Safety then... Get Ready to Surf!

9:30AM: Surf Session #1

10:30AM: Snack Break

10:45AM: Shoreline Investigation

12:00PM: LUNCH

1:00PM: Surf Session #2

2:00PM: End of Camp Day

Tuesday

9:00AM: Arrival

9:15AM: Kayak Adventure

12:00PM: LUNCH

1:00PM: Surf Session #1

2:00PM: End of Camp Day

Wednesday

9:00AM: Arrival

9:30AM: Surf Session #1

10:30AM: Snack Break

10:45AM: Shoreline Investigation

12:00PM: LUNCH

1:00PM: Surf Session #2

2:00PM: End of Camp Day

Thursday

9:00AM: Arrival

9:15AM: Kayak Adventure

12:00PM: LUNCH

1:00PM: Surf Session #1

2:00PM: End of Camp Day

Friday

9:00AM: Arrival

9:30AM: Surf Session #1

10:30AM: Snack Break

10:45AM: Shoreline Investigation

12:00PM: LUNCH

1:00PM: Surf Session #2

2:00PM: End of Camp Day

000631

Class Title: Birthday Surf Celebrations

Maximum # of students per class: 20

Minimum # of students per class: 8

Instructor to student ratio: 1:4

Age group of students: age 5 on up

Days of operation: any day of the week

Schedule: Surf Celebrations run one day

Hours: 9:00-11:00, 11-1:00, 1:00-3:00, 3:00-5:00

Price: \$ 50.00 per person (for a one day, 2 hour celebration)

\$ 40.00 per person (for the 1 day, 2 hour celebration, 16 person minimum)

There's no better way to celebrate your Birth than a surf! Have a good time with your friends. We provide shade canopy and tables, and all the necessary surf equipment. Catering available upon request (for an additional charge).

Interpretive program will include:

*water safety (including "rip tide" identification and reaction, natural and manmade hazards)

*surfing etiquette

Class Title: Private and Semi-Private Surf Lessons

Maximum # of students per class: 5

Minimum # of students per class: 1

Instructor to student ratio: 1:1, up to 1:5

Age group of students: age 5 on up

Days of operation: any day of the week

Schedule: year round

Hours: M-F, 9:00-4:00, Sat.-Sun., 9:00-4:00

Price: \$65.00 one person, one hour (ages 5 and up)

\$55.00 (per person) for 2-3 people, one hour (ages 5 and up)

\$45.00 (per person) for 4-5 people, one hour (ages 5 and up)

\$90.00 one person, 1.5 hours (ages 5 and up)

\$80.00 (per person) for 2-3 people, 1.5 hours (ages 5 and up)

\$65.00 (per person) for 4-5 people, 1.5 hours (ages 5 and up)

\$110.00 one person, 2 hours (ages 5 and up)

\$100.00 (per person) for 2-3 people, 2 hours (ages 5 and up)

\$80.00 (per person) for 4-5 people, 2 hours (ages 5 and up)

Private lessons are the quickest, easiest way to learn how to surf and improve upon what you already know. We welcome all ability levels. Remember, time is short when one wave can last a lifetime.

Interpretive program will include:

*water safety (including "rip tide" identification and reaction, natural and manmade hazards)

EXHIBIT C
Surf Concession Requirements

The following requirements are subject to revision at any time by the CITY:

1. **Maximum number of participants/boards on the beach and in the water**
A maximum of 50 students per Site may be on the beach at any one time. Of those fifty students, a maximum of twenty-five students per group may be in the water at any one time.
2. **Identifying Markers**
Instructors must wear red rashguards with CONCESSIONAIRE's name. Students must wear a color specific rashguard with CONCESSIONAIRE's name. Both student and instructor rashguards are to be worn at all times while in the water. The CITY-issued sign with the CONCESSIONAIRE's name must be clearly posted at each Site, whenever classes are in progress.
3. **Student to instructor ratios.**
For every five students on the beach or in the water, one instructor must be present. Anytime students are in the water at least one American Red Cross certified instructor must be present and supervising the class.
4. **Beach Access**
CONCESSIONAIRE shall not exclude the public from any Site. Beach access must be kept clear at all times. Surfboards must be kept in a position that does not obstruct beach access.
5. **Concession Site/Location**
Surf CONCESSIONAIRES must operate from their assigned Site on the beach sand only. CONCESSIONAIRES may meet and escort participants from the parks facilities, parking lots and/or nearest street but may not set up any concession operations in the park.
6. **Equipment**
All CONCESSIONAIRES that provide equipment to students must provide a soft foam surfboard with a leash; hardboards must have nose guard and tail guard protection.
7. **CPR and First Aid**
All surf instructors must take and pass "American Red Cross Lifeguard Training and CPR for the Professional Rescuer. This is a 28.5 hour course that provides training in 'surveillance skills to help you recognize and prevent injuries, rescue skills - in the water and on land, first aid training and professional rescuer CPR...' Additionally, an American Red Cross first aid kit, approved by a City of San Diego Lifeguard, must be onsite at all times. Prior to the initial class, the operator must arrange with the lifeguard for an initial equipment and first aid safety inspection."

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8. **Waivers**

The CONCESSIONAIRE must have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach which arise from or are in any manner connected with the services provided to the participants under this Agreement.

9. **Minimum Age Requirements**

The minimum age for an instructor is eighteen (18) years of age.

10. **EMERGENCY RESPONSE PLAN FOR SURF CONCESSIONS**

The following plan is the minimum level of response and readiness for Surf Concessions during emergency situations. CONCESSIONAIREs are required to read the plan and cover all aspects of the plan with each employee working on the beach under this Concession Agreement.

Ocean Conditions

Ensure that the ocean conditions are safe to conduct class based on the skill levels of the instructor and the students.

General Rescue Procedures for Water Emergencies

1. Survey the scene.
2. The rescuer should consider his/her level of rescue skill prior to attempting a rescue.
3. Ensure proper use of rescue equipment.
4. Safely approach and determine if the victim is distressed.
5. Perform and rescue based on American Red Cross training.
6. Move the victim to safety.
7. Remove the victim from the water.
8. Perform a primary survey.
9. If an emergency exists, ensure that someone activates 911 and requests San Diego Lifeguard assistance.
10. Provide first aid until emergency medical services (EMS) arrive.
11. If other instructors and students are in the water, they should be directed to the beach until the emergency is clear. Other instructors should provide assistance as needed.

General Rescue Procedures for Land Emergencies

Survey the scene.

Approach victim when it is safe for the rescuer.

Perform a primary survey.

If an emergency exists requiring EMS, activate the 911 system and ensure paramedics and San Diego Lifeguard are responding.

Provide emergency care until EMS arrives.

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Cellular Communications

All surf concessions shall keep a fully charged and functioning cellular phone on the beach in a location where it can be immediately accessed in case of emergency.

Emergency Signals

Pre-designated signals will be used to communicate with instructors and other surf-camp personnel in the event emergency assistance is needed. **WHISTLES** will be immediately available to all instructors and surf camp personnel. One hand or any piece of equipment being waved overhead from side to side, or three short whistle blasts will indicate that an emergency exists and immediate assistance is needed. One hand placed on the top of the head will indicate that everything is all clear. Instructors and other surf camp personnel will be diligent to look for any signs and signals of distress when they are at the beach.

Any emergency signal observed by an instructor or any surf camp personnel will cause the immediate activation of the emergency response plan.

Accidents, Injuries and Incident Slips

In addition to the requirements under 16.G. of this Agreement, CONCESSIONAIRE shall notify the lifeguard supervisor on duty, as soon as feasible, of any accident or injury occurring in the operation of the Concession, regardless of severity. All rescues and medical aids involving surf camp students, instructors or other personnel will be documented on company incident slips.

**CITY OF SAN DIEGO
CONCESSION PERMIT**

THIS CITY OF SAN DIEGO CONCESSION PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and OCEAN EXPERIENCE SURF SCHOOL ("CONCESSIONAIRE"), to be effective upon execution by the parties and approval by the San Diego City Attorney (the "Effective Date"), as follows:

1. Incorporated Documents. This Permit is created pursuant to the Surf School/Camp REQUEST FOR PROPOSAL ("RFP") issued by the Real Estate Assets Department (December 11, 2007), CONCESSIONAIRE'S proposal in response to the RFP, dated January 29, 2008. The Operating Plan, submitted by CONCESSIONAIRE as part of its proposal, is attached hereto as Exhibit A and incorporated herein. Also attached and incorporated herein are the following documents: Exhibit A, Site Map; and Exhibit C, Surf Concession Requirements.
2. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to CONCESSIONAIRE, its employees, agents and contractors to operate surf instruction concessions ("Concessions") within CITY beach sites ("Sites") designated by the City of San Diego ("CITY"). The locations of the Sites included under this Permit are referenced below and more specifically, designated on the attached Exhibit A. However, any of the Sites named below are subject to change at CITY'S discretion.

Area/Beach	Site
Mission Beach (Southern Area Site 4 – Exhibit A)	South of the S. Mission Beach Lifeguard tower
Ocean Beach (Southern Area Site 5 – Exhibit A)	Santa Monica Ave.

Any of the above Sites may be deleted at any time by CITY upon thirty (30) days written notice to CONCESSIONAIRE. If an alternate site is not available, a proportionate amount of the minimum fixed concession fee (as specified in Section 10.B.) shall be waived for the deleted Site.

3. Use of Sites. This Permit is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate surf instruction concessions serving the general public under the terms and conditions of this Permit. No solicitation or marketing is permitted on City beaches. Renting or selling of beach equipment or other merchandise is not allowed under this Permit.
4. Maximum Days and Hours of Operation. Maximum hours of land-based operations are 8:30 a.m. - 5:00 p.m. Water instruction is permitted from 9:00 a.m. to 4:00 p.m. All Concessions must be vacated by 5:00 p.m. daily. The CITY reserves the right to change

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the days and/or hours of operation at its discretion. Operations are permitted seven days a week with the following exceptions:

- A. Under no circumstances are operations permitted on the 4th of July holiday.
 - B. Special Events. Unless otherwise authorized by the CITY Manager, CONCESSIONAIRE shall have no rights within certain areas of its Concession Sites or designated portions thereof during days in which special events are scheduled by CITY in these areas. CITY shall give CONCESSIONAIRE advance written notice of any such special events.
5. Competent Management. Throughout the term of this Permit, CONCESSIONAIRE shall provide competent management of the Sites for the permitted uses to the satisfaction of the City Manager. CONCESSIONAIRE covenants to operate the Concession for the above-specified purposes and diligently conduct the operations to produce a reasonable and substantial gross income.
 6. Term. The term of this Permit ("Term") shall be shall be 64 months commencing on June 1, 2008, and expiring on September 30, 2013. This Permit may be terminated at any time by either party upon ninety (90) days prior written notice to the other party.
 7. Holding Over. Any use of the Concession Sites by CONCESSIONAIRE after the expiration of this Permit is not permitted. Any extension of the term of the Permit beyond 64 months shall require approval of CITY Council.
 8. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of such termination of this Permit. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY'S termination of this Permit.
 9. Special Provisions
 - A. Operating Plan. The Operating Plan(s) for June 2008 through May 2009 submitted with the CONCESSIONAIRE's response to the CITY'S Request for Proposal, shall be revised by CONCESSIONAIRE, if required by CITY to meet CITY'S approval, and the final CITY approved Plan(s) shall be incorporated into this Permit as Exhibit B. Beginning June 1, 2009, and for every 12 months thereafter, the CONCESSIONAIRE shall provide the CITY with an Operating Plan for the coming quarter for the CITY'S approval. All Operating Plans submitted to the CITY should be consistent with the format and content of the Plans included as Exhibit B. CITY shall have the right to approve or disapprove the proposed plan. Once approved, CONCESSIONAIRE shall not make any changes to the Plan without prior written approval of CITY. At all times, the CONCESSIONAIRE shall ensure that all operations permitted under this Permit comply with the Surf Instruction Requirements incorporated herein as Exhibit C.

- B. Exclusiveness of Permit and Unauthorized Vending. In addition to special events described in Section 4.B., CITY may, during the term of this Permit, enter into Permits with other CONCESSIONAIRES to provide surf instructions during times not scheduled for operations in the approved Operating Plan(s) at the Sites permitted in this Permit. However, CITY, by granting this Permit to CONCESSIONAIRE, makes no warranty that the Sites shall be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities shall be maintained.
- C. Concession Sites. On each Site included in this Permit, CONCESSIONAIRE shall erect no improvements except one shade structure no greater than twenty (20) feet by twenty (20) feet or, no more than two shade structures no greater than ten (10) feet by ten (10) feet in size, or as shall, in the opinion of the CITY be needed to adequately serve the public. CITY reserves the right to request that the CONCESSIONAIRE modify the dimensions of the structure. The Sites must be designed and maintained so as to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Sites by the CONCESSIONAIRE must be approved by CITY and shall not remain on location after permitted hours of operation, unless prior approval of CITY is obtained. If in the opinion of CITY, the number of Sites within any Concession covered under this Permit at any time falls short of or exceeds the number of Sites needed to adequately serve the public, CONCESSIONAIRE shall, without liability to the CITY, upon receipt of notice from CITY, adjust the number of Sites to the number specified by CITY as adequate to serve the public. Until such time as CITY requires CONCESSIONAIRE, or agrees to a request from CONCESSIONAIRE, to increase or decrease the number of Sites CONCESSIONAIRE shall operate no more and no fewer than the Sites designated in this Permit. At each Site, CONCESSIONAIRE shall occupy no more than two and no less than one area of the dimensions specified herein.
- D. Improvements. Upon expiration or termination of this Permit, any and all improvements, trade fixtures, structures, and installations or additions to the Sites now existing or constructed on the Sites by CONCESSIONAIRE shall be deemed to be part of the Sites and shall become CITY'S property free of all liens and claims. All personal property remaining on the Sites after expiration or termination shall also become the property of CITY.
- E. Maintenance of Sites. CONCESSIONAIRE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Sites clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about said spaces to the satisfaction of CITY and at CONCESSIONAIRE's sole cost. All Sites must be cleaned up nightly by CONCESSIONAIRE or more often, as required.
- F. Standard of Employees. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations of the Concession in a creditable manner. CONCESSIONAIRE shall thoroughly train its employees in their duties and shall regularly monitor them to ensure that they behave in a courteous manner, do not

disturb the quiet enjoyment of other beach users, and otherwise comply with all of the Surf Instruction Requirements in Exhibit C of this Permit.

10. Fees.

- A. Percentage Fees. Percentage fees will be calculated on a calendar month basis and will consist of ten percent (10.00%) of the gross income resulting from the operations permitted under this Permit. The City Manager, in his sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, Use of Sites, as may be approved in writing by the City Manager prior to the commencement of any additional service or operation. Provided however, any activity conducted on the Sites without the prior written approval of the City Manager shall be subject to the requirements of Section 10.E., Unauthorized Use Charge.
- B. Minimum Fees. The annual Minimum Fee established for the first year following the effective date of this Permit is five-thousand one-hundred dollars (\$5,100) per Site, which is four-hundred and twenty-five dollars (\$425) per Site on a monthly installment basis. In addition, one free week of surf camp at Site 5 (Santa Monica Ave.), running from June 23 through August 29, 2008, and through the schedule of Surf Camp session during each following year of the Permit will be donated to each City of San Diego Recreation Center.

If the Minimum Fee is greater than the percentage fee on a calendar month basis, one-twelfth (1/12) of the Minimum Fee is required to be paid for that month. Minimum Fees are to be paid in monthly installments on or before the day of the calendar month when percentage fees are due pursuant to Section 10.I., Time and Place of Payment. In the event that the combined total percentage fee payments and monthly installments of the Minimum Fee during any Permit year equal or exceed the required Minimum Fee for that year, for the balance of that year, CONCESSIONAIRE shall discontinue paying monthly installments of the Minimum Fee until the beginning of the next Permit Year. If in any Permit Year, Minimum Fees paid plus Percentage Fees paid exceed the annual Minimum Fee and also exceed the fee which would have been paid if the Percentage Fee had been paid on total gross income, the excess over the total fee owed shall be credited against the next payable fee as it becomes due. It is the intent of this provision that CONCESSIONAIRE shall pay monthly installments of the annual Minimum Fee as a guarantee against the Percentage Fee requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

Minimum Fee Adjustment. Effective at the beginning of the first day of the 13th, 25th, 37th, 49th, and 61st month of this Permit, the annual Minimum Fee shall be eighty percent (80.00%) of the annual average of actual rents paid in the Initial Term plus any option terms exercised under this Permit. The annual average shall then be divided by twelve (12) to establish the new monthly Minimum Fee. It is recognized that the adjustments shall be calculated by the CITY upon completion of payments due for the preceding year in order to determine the amount of the Minimum Fee for the option period. Until such calculations are completed, CONCESSIONAIRE shall

continue paying monthly Minimum Fees at the prior rate. Any additional fees determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to the CITY within thirty (30) days following written notice. In no event shall the Minimum Fee Adjustment result in a decrease in the Minimum Fee requirement in effect immediately prior to the adjustment date.

- C. Annual Percentage Adjustment to Minimum Fee. If CONCESSIONAIRE has not paid percentage fees during the previous 12 month period, then the Minimum Fee shall increase to one-hundred five (105.00%) of the previous year's Minimum Fee.
- D. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any concession fees when due, CONCESSIONAIRE will pay, in addition to the unpaid concession fees, a fee of \$25.00. If the fees are still unpaid at the end of the fifteen (15) days, CONCESSIONAIRE shall pay a fee of \$50.00, which is mutually agreed by the parties to this Permit to be appropriate to compensate the CITY for loss resulting from concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- E. Unauthorized Use Charge. CONCESSIONAIRE shall pay CITY fifty percent (50.00%) of the gross receipts for any service or use that is not permitted by this Permit. This payment is subject to the due date provided in this Permit for minimum guaranteed fees payments and the provision for delinquent concession fees payments and the provision for delinquent concession fees. The existence of the fifty percent (50.00%) charge in this clause and the payment of this charge or any part of it, do not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default CONCESSIONAIRE for participating in or allowing any unauthorized use.
- F. Gross Income. "Gross income" or "gross receipts", as used in this Permit shall include all income resulting from the Concession from whatever source derived whether received or to become due. Provided; however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by CONCESSIONAIRE in computing gross income. Gross income shall not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The percentage concession fees shall be calculated and paid by CONCESSIONAIRE on the basis of gross income whether the income is received by CONCESSIONAIRE or by any permittee or licensee, or their agents, and all gross income received by any permittee, licensee, or other party as a result of occupancy or operation of the Site(s) shall be regarded as gross income of CONCESSIONAIRE for the purpose of calculating the percentage concession fees required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by or pursuant to this Permit.

G. Inspection Of Records.

- i. Records. CONCESSIONAIRE shall, at all times during the Permit term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site(s). The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, class lists, or other documents as necessary to allow CITY to easily determine the gross income. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day. In the event of admission charges or concession rents, CONCESSIONAIRE shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is approved by the CITY.
- ii. Financial Statements. Within sixty (60) days after the end of the Initial Term and any subsequent option terms, CONCESSIONAIRE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of concession percentage fees paid CITY for the year are classified according to the categories of business established for any percentage concession fees and for any other business conducted on or from the Site(s). The statement shall be signed by CONCESSIONAIRE and Financial Representative of CONCESSIONAIRE attesting to the accuracy thereof, which shall be legally binding upon CONCESSIONAIRE.
- iii. Right to Inspect. All CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 10.G.(i), will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Site(s). The CITY, at its discretion, shall have the right to inspect and audit the business of CONCESSIONAIRE, its agents, permittees, and licensees operating on, and in connection with, the Site(s) as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the requirements of this Permit. At CITY'S request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Permit information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.

- iv. Audit Cost. The full cost of the CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case CONCESSIONAIRE agrees to pay CITY'S cost of audit(s):

The audit(s) reveal an underpayment of more than five percent (5.00%) or more than \$10,000.00, which ever is less, between the concession fees due as reported and paid by CONCESSIONAIRE, pursuant to this Permit and concession fees determined by the audit(s).

CONCESSIONAIRE has failed to maintain complete and true books, records, accounts, and supporting documents in strict accordance with this section.

Any underpayment of concession fees less than five percent (5.00%) revealed by the audit may be paid within thirty (30) days written notice from the CITY without penalty, otherwise, CONCESSIONAIRE shall incur interest charges on the delinquent amount as defined in Section 10.D., DELINQUENT CONCESSION FEES. CITY will credit any overpayment against incoming concession fees. Any overpayment determined after the end of this Permit will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- H. Default. CONCESSIONAIRE'S failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Permit, a breach of this Permit and cause for termination.
- I. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Income subject to percentage fees was earned. Checks shall be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
- J. Security Deposit. The CONCESSIONAIRE shall deliver to CITY with the executed copies of this Permit, a good faith deposit in the amount of two thousand five hundred dollars (\$2,500.00). All or any portion of the principal sum shall be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this Permit by CONCESSIONAIRE, CONCESSIONAIRE'S successors or assignees, or for payment of expenses incurred by CITY as a result of

CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Permit. If at the end of the term of this Permit, CONCESSIONAIRE has performed all of the provisions of the Permit, the deposit or any remaining balance shall be returned to the CONCESSIONAIRE without interest. The security deposit may be increased by CITY proportionate to any increase in Minimum Fees. CONCESSIONAIRE shall maintain the security deposit throughout the Term. **Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Permit, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**

- i. Utilization. If CITY utilizes all or any portion of the security deposit, upon 10 days prior written notice, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
 - ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure CONCESSIONAIRE'S obligations under this Permit.
 - iii. Return. Provided CONCESSIONAIRE is not in breach or default of this Permit, CITY shall return the security deposit, or any balance thereof, to CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Permit.
11. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the City Manager, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the City Manager's sole and absolute discretion, unless otherwise expressly provided.
 12. Acceptance of Sites. CONCESSIONAIRE represents and warrants that it has independently inspected the Sites and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Sites. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Permit. CONCESSIONAIRE further acknowledges that the Sites are in the condition called for by this Permit, that CITY has performed all work, if any, related to the Sites and required by this Permit, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Sites, including without limitation the presence of any hazardous substances.
 13. Maintenance of the Sites. CONCESSIONAIRE shall, at CONCESSIONAIRE'S sole cost and expense and to CITY'S satisfaction, maintain the Sites in a decent, safe, healthy and sanitary condition at all times during the Term.

14. Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Sites in a creditable manner.
15. Inspection. CITY may, at all times upon prior notice, enter and inspect the Sites.
16. Insurance. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a current certificate of insurance for: (1) Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of Two Million Dollars (\$2,000,000).
 - A. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 - B. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Permit.
 - C. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
 - D. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
 - E. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Permit, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Sites, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
 - F. Modification. To assure protection from and against the kind and extent of risk existing on the Sites, CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Permit.

- G. Accident Reports. CONCESSIONAIRE shall report to CITY any accident causing more than Five Thousand Dollars (\$5,000) worth of property damage or any serious injury to persons on the Sites. Such report shall be delivered to CITY within five (5) days of such accident and shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- H. Failure to Comply. If CONCESSIONAIRE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. CONCESSIONAIRE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify CONCESSIONAIRE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. CONCESSIONAIRE shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice. **Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**
17. Indemnification. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
18. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in CONCESSIONAIRE'S use of the Sites, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

19. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Permit from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.
20. Drug-free Workplace. CONCESSIONAIRE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Sites and specifying the actions that will be taken against employees for violations of the prohibition; and
 - B. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. CONCESSIONAIRE'S policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
21. Disabled Access Compliance. CONCESSIONAIRE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
22. CONCESSIONAIRE'S Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE'S occupancy, use, development and maintenance of the Sites and any damages to the improvements on, under, or in the vicinity of the Sites resulting directly or indirectly thereby.
23. No Nuisance. CONCESSIONAIRE shall not use the Sites in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
24. No Assignment. CONCESSIONAIRE shall not assign any rights granted by this Permit or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.

25. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Sites, CONCESSIONAIRE shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE'S cost.
26. Advertisement and Marketing. Any advertising or marketing which reference the City of San Diego may not be distributed by the CONCESSIONAIRE without the advanced written approval of the CITY. If CONCESSIONAIRE uses the City of San Diego in any context to promote its business operations without prior written approval by CITY, CONCESSIONAIRE will be considered to be in default. No advertising or marketing materials of any kind may be posted or distributed on any City beach without the advanced written approval of the CITY.
27. Encumbrances. CONCESSIONAIRE shall keep the Sites free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Sites, including without limitation CONCESSIONAIRE'S failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
28. Defaults and Remedies.
- A. Default by CONCESSIONAIRE. In the event that:
- i. CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Permit to be performed or fulfilled by CONCESSIONAIRE and shall fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
 - ii. CONCESSIONAIRE shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or
 - iii. CONCESSIONAIRE shall make a general assignment for the benefit of creditors;
- then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate this Permit and all rights of CONCESSIONAIRE and of all persons claiming rights through CONCESSIONAIRE to the Concession Sites or to possession thereof, and

CITY may then enter and take possession of the Sites and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided; however, in the event that any default described in Part (1)a. of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY shall not terminate this Permit pursuant to the default if CONCESSIONAIRE immediately commences to cure the default and diligently pursues cure to completion. In any event, either party may terminate this Permit without cause by giving ninety (90) days written notice of intent to terminate to the other party.

B. Abandonment by CONCESSIONAIRE. Even though CONCESSIONAIRE has breached the Permit and abandoned the Concession Site(s), this Permit shall continue in full force and effect for so long as CITY does not terminate this Permit, and CITY may enforce all its rights and remedies under this Permit, including, but not limited to, the right to recover the concession fee as it becomes due, plus damages. For purposes of this section, the following do not constitute a termination of CONCESSIONAIRE's right to possession or operation:

- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Permit.
- ii. The appointment of a receiver upon initiative of CITY to protect CITY'S interest under this Permit.

29. Damages. Damages which CITY may recover in the event of default under this Permit include the worth, at the time of the award, of the amount by which the unpaid concession fee for the balance of the term after the date of award or for any shorter period of time specified in this Permit exceeds the amount of concession fee loss for the same period that the CONCESSIONAIRE proved could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

30. Compliance with Laws. CONCESSIONAIRE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites.

31. Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Sites, including any licenses or permits. CONCESSIONAIRE acknowledges that this Permit may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE shall pay all such possessory interest taxes. CONCESSIONAIRE'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Permit.

32. Hazardous Substances. CONCESSIONAIRE shall not allow the installation or release of hazardous substances in, on, under, or from the Sites. CONCESSIONAIRE and CONCESSIONAIRE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Sites without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.

- A. Remediation. If any release of a hazardous substance occurs, CONCESSIONAIRE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
- B. Indemnity. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- C. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Sites, CONCESSIONAIRE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, CONCESSIONAIRE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Sites.
- D. Environmental Assessment. At CITY'S option upon expiration or termination of this Permit, an environmental assessment of the Sites shall be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE'S sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Sites, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with

recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and CONCESSIONAIRE shall pay all costs and expenses therefor.

33. Waiver. CITY'S failure to insist upon the strict performance of any of CONCESSIONAIRE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Sites is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
34. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
35. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
36. Number and Gender. Words of any gender used in this Permit shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
37. Captions. Section headings and captions shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Permit. The numbers of the paragraphs and pages of this Permit may not be consecutive. Such lack of consecutive numbers shall have no effect on the enforceability of this Permit.
38. Entire Permit. This Permit constitutes the entire Permit between the parties and supersedes any and all prior understandings, representations, warranties and Permits between them and pertaining to this Permit and CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
39. Legal Proceedings. If either party commences legal proceedings to enforce or interpret any right or obligation under this Permit, the prevailing party shall be entitled to an award of costs related thereto, including without limitation reasonable attorney fees and court costs.

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40. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

THE CITY OF SAN DIEGO

Real Estate Assets Department

Attention: Director, Real Estate Assets Department

1200 Third Avenue, Suite 1700 (MS 51A)

San Diego, California 92101

Ocean Experience Surf School

Roger Caldwell

4881 Newport Ave.

San Diego, CA 92107

41. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites.
42. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Permit shall be deemed to refer to "the Mayor or his/her designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

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43. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Permit, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____

James Barwick, Director
Real Estate Assets Department

Date: 4-6-06

OCEAN EXPERIENCE SURF SCHOOL,
CONCESSIONAIRE

BY: Roger Caldwell

Roger Caldwell, Owner

APPROVED AS TO FORM AND LEGALITY:

Effective Date: _____

MICHAEL J. AGUIRRE, City Attorney

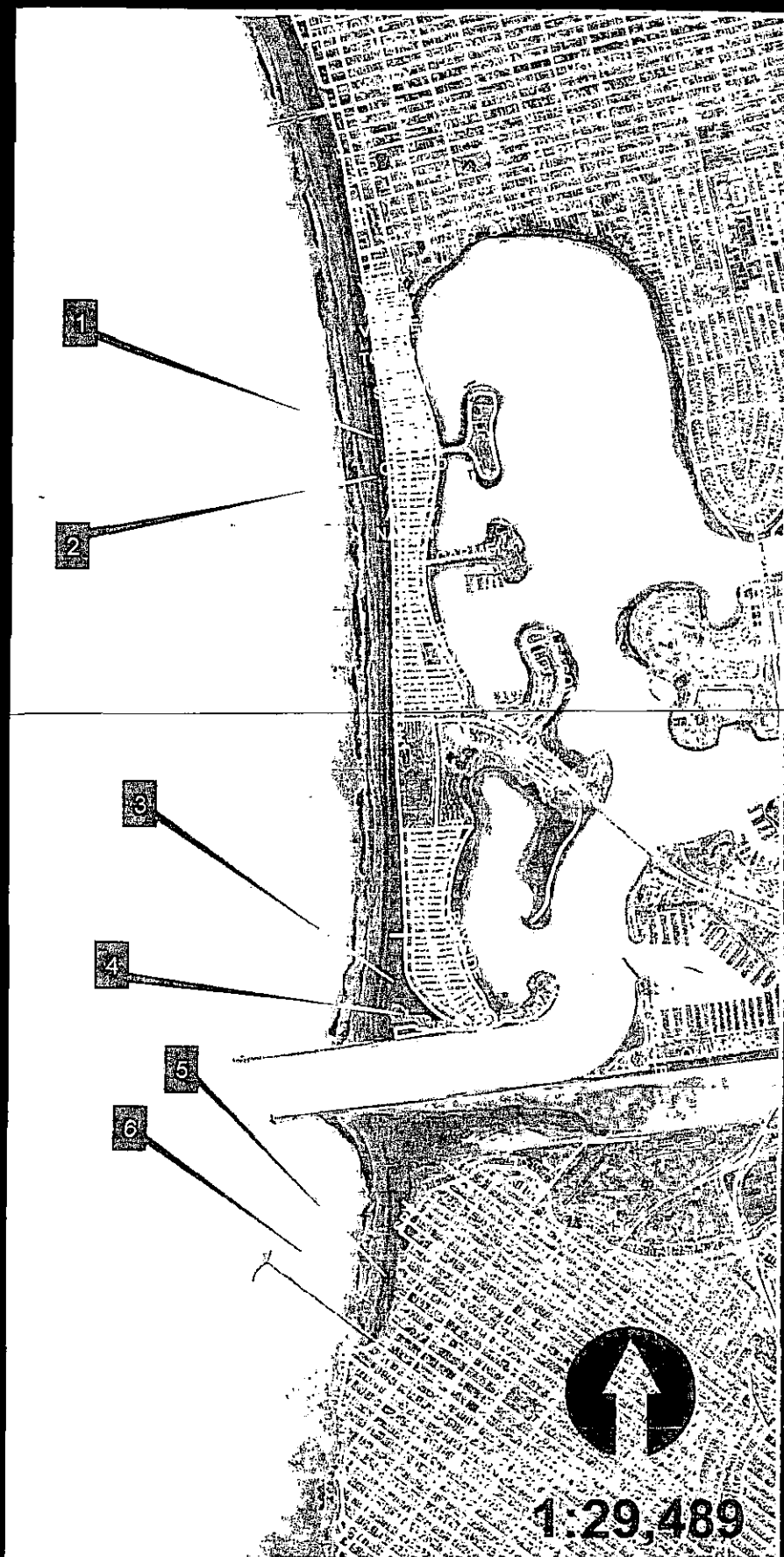
BY: _____,
Deputy City Attorney

000702

EXHIBIT A

Southern Area Sites (Mission and Ocean Beaches)

- Site 1 Pismo Court
- Site 2 Ostend Court
- Site 3 North of the South Mission Beach Lifeguard Tower
- Site 4 South of the South Mission Beach Lifeguard Tower
- Site 5 Santa Monica Avenue
- Site 6 Newport Avenue



Every reasonable effort has been made to assure the accuracy of this map. However, neither the SanGIS participants nor San Diego Data Processing Corporation assume any liability arising from its use.

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EXHIBIT B

Summer Camp Schedule

Week 1	June 23-27	Week 6	July 28- August 1
Week 2	June 30-July 3	Week 7	August 4-8
Week 3	July 7-11	Week 8	August 11-15
Week 4	July 14-18	Week 9	August 18-22
Week 5	July 21-25	Week 10	August 25-29

Schedules for the half- and full-day camps are identical.

Private lessons may be run at the same time as camps. Parties and other special events may also run at the same time as camps.

At no time will Concessionaire operate outside of hours specified by the Concession Agreement.

Number of Students

A maximum of 50 students will be in each class, with a maximum of 25 in the water at any time. The instructor ratio is a maximum 1-to-5. Private lessons may be run at the same time as camps. Parties and other special events may also run at the same time as camps. At no time will Concessionaire exceed the number of students specified in the agreement.

Days and Hours of Operations

Full-day Surf Camp classes are five days long, Monday through Friday from 9 a.m. to 3:30 p.m. Lunch is included. Half-day classes run Monday through Friday from 9 a.m. to noon and 12:30 to 3:30 p.m. Any private lessons or special classes will operate within the hours and dates specified by the City.

Material Covered

The following is a summary of the material covered in the surf camp. For a detailed lesson plan and curricula, see Exhibit C of the Operating Agreement.

Curriculum includes:

- Surfing
- Ocean Water Safety
- Lifesaving Techniques
- Kayaking
- Body Surfing
- Tide Pooling
- Surfboard Repair
- Snorkeling
- Indo Boarding
- Marine Science
- Body Boarding
- Skim Boarding
- Carve Boarding
- Surf History
- Arts & Crafts
- Board Shaping
- Sea Cave Exploring
- Beach Games

Private Camps

Private camps are conducted year-round. These are generally school groups, companies and other private groups. Operator will continue to aggressively market these camps.

EXHIBIT C
Surf Concession Requirements

The following requirements are subject to revision at any time by the CITY:

1. **Maximum number of participants/boards on the beach and in the water**
A maximum of 50 students per Site may be on the beach at any one time. Of those fifty students, a maximum of twenty-five students per group may be in the water at any one time.
2. **Identifying Markers**
Instructors must wear red rashguards with CONCESSIONAIRE's name. Students must wear a color specific rashguard with CONCESSIONAIRE's name. Both student and instructor rashguards are to be worn at all times while in the water. The CITY-issued sign with the CONCESSIONAIRE's name must be clearly posted at each Site, whenever classes are in progress.
3. **Student to instructor ratios.**
For every five students on the beach or in the water, one instructor must be present. Anytime students are in the water at least one American Red Cross certified instructor must be present and supervising the class.
4. **Beach Access**
CONCESSIONAIRE shall not exclude the public from any Site. Beach access must be kept clear at all times. Surfboards must be kept in a position that does not obstruct beach access.
5. **Concession Site/Location**
Surf CONCESSIONAIRES must operate from their assigned Site on the beach sand only. CONCESSIONAIRES may meet and escort participants from the parks facilities, parking lots and/or nearest street but may not set up any concession operations in the park.
6. **Equipment**
All CONCESSIONAIRES that provide equipment to students must provide a soft foam surfboard with a leash; hardboards must have nose guard and tail guard protection.
7. **CPR and First Aid**
All surf instructors must take and pass "American Red Cross Lifeguard Training and CPR for the Professional Rescuer." This is a 28.5 hour course that provides training in 'surveillance skills to help you recognize and prevent injuries, rescue skills – in the water and on land, first aid training and professional rescuer CPR...' Additionally, an American Red Cross first aid kit, approved by a City of San Diego Lifeguard, must be onsite at all times. Prior to the initial class, the operator must arrange with the lifeguard for an initial equipment and first aid safety inspection."

8. **Waivers**

The CONCESSIONAIRE must have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach which arise from or are in any manner connected with the services provided to the participants under this Agreement.

9. **Minimum Age Requirements**

The minimum age for an instructor is eighteen (18) years of age.

10. **EMERGENCY RESPONSE PLAN FOR SURF CONCESSIONS**

The following plan is the minimum level of response and readiness for Surf Concessions during emergency situations. CONCESSIONAIRES are required to read the plan and cover all aspects of the plan with each employee working on the beach under this Concession Agreement.

Ocean Conditions

Ensure that the ocean conditions are safe to conduct class based on the skill levels of the instructor and the students.

General Rescue Procedures for Water Emergencies

1. Survey the scene.
2. The rescuer should consider his/her level of rescue skill prior to attempting a rescue.
3. Ensure proper use of rescue equipment.
4. Safely approach and determine if the victim is distressed.
5. Perform and rescue based on American Red Cross training.
6. Move the victim to safety.
7. Remove the victim from the water.
8. Perform a primary survey.
9. If an emergency exists, ensure that someone activates 911 and requests San Diego Lifeguard assistance.
10. Provide first aid until emergency medical services (EMS) arrive.
11. If other instructors and students are in the water, they should be directed to the beach until the emergency is clear. Other instructors should provide assistance as needed.

General Rescue Procedures for Land Emergencies

- Survey the scene.
- Approach victim when it is safe for the rescuer.
- Perform a primary survey.
- If an emergency exists requiring EMS, activate the 911 system and ensure paramedics and San Diego Lifeguard are responding.
- Provide emergency care until EMS arrives.

Cellular Communications

All surf concessions shall keep a fully charged and functioning cellular phone on the beach in a location where it can be immediately accessed in case of emergency.

Emergency Signals

Pre-designated signals will be used to communicate with instructors and other surf-camp personnel in the event emergency assistance is needed. **WHISTLES** will be immediately available to all instructors and surf camp personnel. One hand or any piece of equipment being waved overhead from side to side, or three short whistle blasts will indicate that an emergency exists and immediate assistance is needed. One hand placed on the top of the head will indicate that everything is all clear. Instructors and other surf camp personnel will be diligent to look for any signs and signals of distress when they are at the beach.

Any emergency signal observed by an instructor or any surf camp personnel will cause the immediate activation of the emergency response plan.

Accidents, Injuries and Incident Slips

In addition to the requirements under 16.G. of this Agreement, CONCESSIONAIRE shall notify the lifeguard supervisor on duty, as soon as feasible, or any accident or injury occurring in the operation of the Concession, regardless of severity. All rescues and medical aids involving surf camp students, instructors or other personnel will be documented on company incident slips.

**CITY OF SAN DIEGO
CONCESSION PERMIT**

THIS CITY OF SAN DIEGO CONCESSION PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and PACIFIC BEACH SURF SCHOOL ("CONCESSIONAIRE"), to be effective upon execution by the parties and approval by the San Diego City Attorney (the "Effective Date"), as follows:

1. Incorporated Documents. This Permit is created pursuant to the Surf School/Camp REQUEST FOR PROPOSAL ("RFP") issued by the Real Estate Assets Department (December 11, 2007), CONCESSIONAIRE'S proposal in response to the RFP, dated January 29, 2008. The Operating Plan, submitted by CONCESSIONAIRE as part of its proposal, is attached hereto as Exhibit A and incorporated herein. Also attached and incorporated herein are the following documents: Exhibit A, Site Map; and Exhibit C, Surf Concession Requirements.
2. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to CONCESSIONAIRE, its employees, agents and contractors to operate surf instruction concessions ("Concessions") within CITY beach sites ("Sites") designated by the City of San Diego ("CITY"). The locations of the Sites included under this Permit are referenced below and more specifically, designated on the attached Exhibit A. However, any of the Sites named below are subject to change at CITY'S discretion.

Area/Beach	Site
Pacific Beach (Central Area Site 3 – Exhibit A)	South of Pacific Beach Drive
Pacific Beach (Central Area Site 4 – Exhibit A)	North of Santa Rita Place

Any of the above Sites may be deleted at any time by CITY upon thirty (30) days written notice to CONCESSIONAIRE. If an alternate site is not available, a proportionate amount of the minimum fixed concession fee (as specified in Section 10.B.) shall be waived for the deleted Site.

3. Use of Sites. This Permit is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate surf instruction concessions serving the general public under the terms and conditions of this Permit. No solicitation or marketing is permitted on City beaches. Renting or selling of beach equipment or other merchandise is not allowed under this Permit.
4. Maximum Days and Hours of Operation. Maximum hours of land-based operations are 8:30 a.m. - 5:00 p.m. Water instruction is permitted from 9:00 a.m. to 4:00 p.m. All Concessions must be vacated by 5:00 p.m. daily. The CITY reserves the right to change

the days and/or hours of operation at its discretion. Operations are permitted seven days a week with the following exceptions:

- A. Under no circumstances are operations permitted on the 4th of July holiday.
 - B. Special Events. Unless otherwise authorized by the CITY Manager, CONCESSIONAIRE shall have no rights within certain areas of its Concession Sites or designated portions thereof during days in which special events are scheduled by CITY in these areas. CITY shall give CONCESSIONAIRE advance written notice of any such special events.
5. Competent Management. Throughout the term of this Permit, CONCESSIONAIRE shall provide competent management of the Sites for the permitted uses to the satisfaction of the City Manager. CONCESSIONAIRE covenants to operate the Concession for the above-specified purposes and diligently conduct the operations to produce a reasonable and substantial gross income.
 6. Term. The term of this Permit ("Term") shall be shall be 64 months commencing on June 1, 2008, and expiring on September 30, 2013. This Permit may be terminated at any time by either party upon ninety (90) days prior written notice to the other party.
 7. Holding Over. Any use of the Concession Sites by CONCESSIONAIRE after the expiration of this Permit is not permitted. Any extension of the term of the Permit beyond 64 months shall require approval of CITY Council.
 8. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of such termination of this Permit. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY'S termination of this Permit.
 9. Special Provisions
 - A. Operating Plan. The Operating Plan(s) for June 2008 through May 2009 submitted with the CONCESSIONAIRE's response to the CITY'S Request for Proposal, shall be revised by CONCESSIONAIRE, if required by CITY to meet CITY'S approval, and the final CITY approved Plan(s) shall be incorporated into this Permit as Exhibit B. Beginning June 1, 2009, and for every 12 months thereafter, the CONCESSIONAIRE shall provide the CITY with an Operating Plan for the coming quarter for the CITY'S approval. All Operating Plans submitted to the CITY should be consistent with the format and content of the Plans included as Exhibit B. CITY shall have the right to approve or disapprove the proposed plan. Once approved, CONCESSIONAIRE shall not make any changes to the Plan without prior written approval of CITY. At all times, the CONCESSIONAIRE shall ensure that all operations permitted under this Permit comply with the Surf Instruction Requirements incorporated herein as Exhibit C.

- B. Exclusiveness of Permit and Unauthorized Vending. In addition to special events described in Section 4.B., CITY may, during the term of this Permit, enter into Permits with other CONCESSIONAIRES to provide surf instructions during times not scheduled for operations in the approved Operating Plan(s) at the Sites permitted in this Permit. However, CITY, by granting this Permit to CONCESSIONAIRE, makes no warranty that the Sites shall be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities shall be maintained.
- C. Concession Sites. On each Site included in this Permit, CONCESSIONAIRE shall erect no improvements except one shade structure no greater than twenty (20) feet by twenty (20) feet or, no more than two shade structures no greater than ten (10) feet by ten (10) feet in size, or as shall, in the opinion of the CITY be needed to adequately serve the public. CITY reserves the right to request that the CONCESSIONAIRE modify the dimensions of the structure. The Sites must be designed and maintained so as to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Sites by the CONCESSIONAIRE must be approved by CITY and shall not remain on location after permitted hours of operation, unless prior approval of CITY is obtained. If in the opinion of CITY, the number of Sites within any Concession covered under this Permit at any time falls short of or exceeds the number of Sites needed to adequately serve the public, CONCESSIONAIRE shall, without liability to the CITY, upon receipt of notice from CITY, adjust the number of Sites to the number specified by CITY as adequate to serve the public. Until such time as CITY requires CONCESSIONAIRE, or agrees to a request from CONCESSIONAIRE, to increase or decrease the number of Sites CONCESSIONAIRE shall operate no more and no fewer than the Sites designated in this Permit. At each Site, CONCESSIONAIRE shall occupy no more than two and no less than one area of the dimensions specified herein.
- D. Improvements. Upon expiration or termination of this Permit, any and all improvements, trade fixtures, structures, and installations or additions to the Sites now existing or constructed on the Sites by CONCESSIONAIRE shall be deemed to be part of the Sites and shall become CITY'S property free of all liens and claims. All personal property remaining on the Sites after expiration or termination shall also become the property of CITY.
- E. Maintenance of Sites. CONCESSIONAIRE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Sites clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about said spaces to the satisfaction of CITY and at CONCESSIONAIRE's sole cost. All Sites must be cleaned up nightly by CONCESSIONAIRE or more often, as required.
- F. Standard of Employees. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations of the Concession in a creditable manner. CONCESSIONAIRE shall thoroughly train its employees in their duties and shall regularly monitor them to ensure that they behave in a courteous manner, do not

disturb the quiet enjoyment of other beach users, and otherwise comply with all of the Surf Instruction Requirements in Exhibit C of this Permit.

10. Fees.

- A. Percentage Fees. Percentage fees will be calculated on a calendar month basis and will consist of ten percent (10.00%) of the gross income resulting from the operations permitted under this Permit. The City Manager, in his sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, Use of Sites, as may be approved in writing by the City Manager prior to the commencement of any additional service or operation. Provided however, any activity conducted on the Sites without the prior written approval of the City Manager shall be subject to the requirements of Section 10.E., Unauthorized Use Charge.
- B. Minimum Fees. The annual Minimum Fee established for the first year following the effective date of this Permit is nine-thousand dollars (\$9,000) **per Site**, which is seven-hundred and fifty dollars (\$750) **per Site** on a monthly installment basis. In addition, 12 free slots for students in week-long surf camp sessions will be donated to the City of San Diego. Each student must meet the minimum requirements for all students accepted to the Pacific Beach Surf School.

If the Minimum Fee is greater than the percentage fee on a calendar month basis, one-twelfth (1/12) of the Minimum Fee is required to be paid for that month. Minimum Fees are to be paid in monthly installments on or before the day of the calendar month when percentage fees are due pursuant to Section 10.I., Time and Place of Payment. In the event that the combined total percentage fee payments and monthly installments of the Minimum Fee during any Permit year equal or exceed the required Minimum Fee for that year, for the balance of that year, CONCESSIONAIRE shall discontinue paying monthly installments of the Minimum Fee until the beginning of the next Permit Year. If in any Permit Year, Minimum Fees paid plus Percentage Fees paid exceed the annual Minimum Fee and also exceed the fee which would have been paid if the Percentage Fee had been paid on total gross income, the excess over the total fee owed shall be credited against the next payable fee as it becomes due. It is the intent of this provision that CONCESSIONAIRE shall pay monthly installments of the annual Minimum Fee as a guarantee against the Percentage Fee requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

Minimum Fee Adjustment. Effective at the beginning of the first day of the 13th, 25th, 37th, 49th, and 61st month of this Permit, the annual Minimum Fee shall be eighty percent (80.00%) of the annual average of actual rents paid in the Initial Term plus any option terms exercised under this Permit. The annual average shall then be divided by twelve (12) to establish the new monthly Minimum Fee. It is recognized that the adjustments shall be calculated by the CITY upon completion of payments due for the preceding year in order to determine the amount of the Minimum Fee for the option period. Until such calculations are completed, CONCESSIONAIRE shall continue paying monthly Minimum Fees at the prior rate. Any additional fees

determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to the CITY within thirty (30) days following written notice. In no event shall the Minimum Fee Adjustment result in a decrease in the Minimum Fee requirement in effect immediately prior to the adjustment date.

- C. Annual Percentage Adjustment to Minimum Fee. If CONCESSIONAIRE has not paid percentage fees during the previous 12 month period, then the Minimum Fee shall increase to one-hundred five (105.00%) of the previous year's Minimum Fee.
- D. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any concession fees when due, CONCESSIONAIRE will pay, in addition to the unpaid concession fees, a fee of \$25.00. If the fees are still unpaid at the end of the fifteen (15) days, CONCESSIONAIRE shall pay a fee of \$50.00, which is mutually agreed by the parties to this Permit to be appropriate to compensate the CITY for loss resulting from concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- E. Unauthorized Use Charge. CONCESSIONAIRE shall pay CITY fifty percent (50.00%) of the gross receipts for any service or use that is not permitted by this Permit. This payment is subject to the due date provided in this Permit for minimum guaranteed fees payments and the provision for delinquent concession fees payments and the provision for delinquent concession fees. The existence of the fifty percent (50.00%) charge in this clause and the payment of this charge or any part of it, do not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default CONCESSIONAIRE for participating in or allowing any unauthorized use.
- F. Gross Income. "Gross income" or "gross receipts", as used in this Permit shall include all income resulting from the Concession from whatever source derived whether received or to become due. Provided; however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by CONCESSIONAIRE in computing gross income. Gross income shall not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The percentage concession fees shall be calculated and paid by CONCESSIONAIRE on the basis of gross income whether the income is received by CONCESSIONAIRE or by any permittee or licensee, or their agents, and all gross income received by any permittee, licensee, or other party as a result of occupancy or operation of the Site(s) shall be regarded as gross income of CONCESSIONAIRE for the purpose of calculating the percentage concession fees required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by or pursuant to this Permit.

G. Inspection Of Records.

- i. Records. CONCESSIONAIRE shall, at all times during the Permit term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site(s). The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, class lists, or other documents as necessary to allow CITY to easily determine the gross income. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day. In the event of admission charges or concession rents, CONCESSIONAIRE shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is approved by the CITY.
- ii. Financial Statements. Within sixty (60) days after the end of the Initial Term and any subsequent option terms, CONCESSIONAIRE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of concession percentage fees paid CITY for the year are classified according to the categories of business established for any percentage concession fees and for any other business conducted on or from the Site(s). The statement shall be signed by CONCESSIONAIRE and Financial Representative of CONCESSIONAIRE attesting to the accuracy thereof, which shall be legally binding upon CONCESSIONAIRE.
- iii. Right to Inspect. All CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 10.G.(i), will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Site(s). The CITY, at its discretion, shall have the right to inspect and audit the business of CONCESSIONAIRE, its agents, permittees, and licensees operating on, and in connection with, the Site(s) as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the requirements of this Permit. At CITY'S request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Permit information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.

- iv. Audit Cost. The full cost of the CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case CONCESSIONAIRE agrees to pay CITY'S cost of audit(s):

The audit(s) reveal an underpayment of more than five percent (5.00%) or more than \$10,000.00, which ever is less, between the concession fees due as reported and paid by CONCESSIONAIRE, pursuant to this Permit and concession fees determined by the audit(s).

CONCESSIONAIRE has failed to maintain complete and true books, records, accounts, and supporting documents in strict accordance with this section.

Any underpayment of concession fees less than five percent (5.00%) revealed by the audit may be paid within thirty (30) days written notice from the CITY without penalty, otherwise, CONCESSIONAIRE shall incur interest charges on the delinquent amount as defined in Section 10.D., DELINQUENT CONCESSION FEES. CITY will credit any overpayment against incoming concession fees. Any overpayment determined after the end of this Permit will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- H. Default. CONCESSIONAIRE'S failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Permit, a breach of this Permit and cause for termination.
- I. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Income subject to percentage fees was earned. Checks shall be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
- J. Security Deposit. The CONCESSIONAIRE shall deliver to CITY with the executed copies of this Permit, a good faith deposit in the amount of two thousand five hundred dollars (\$2,500.00). All or any portion of the principal sum shall be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this Permit by CONCESSIONAIRE, CONCESSIONAIRE'S successors or assignees, or for payment of expenses incurred by CITY as a result of

CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Permit. If at the end of the term of this Permit, CONCESSIONAIRE has performed all of the provisions of the Permit, the deposit or any remaining balance shall be returned to the CONCESSIONAIRE without interest. The security deposit may be increased by CITY proportionate to any increase in Minimum Fees. CONCESSIONAIRE shall maintain the security deposit throughout the Term. **Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Permit, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**

- i. Utilization. If CITY utilizes all or any portion of the security deposit, upon 10 days prior written notice, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
 - ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure CONCESSIONAIRE'S obligations under this Permit.
 - iii. Return. Provided CONCESSIONAIRE is not in breach or default of this Permit, CITY shall return the security deposit, or any balance thereof, to CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Permit.
11. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the City Manager, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the City Manager's sole and absolute discretion, unless otherwise expressly provided.
 12. Acceptance of Sites. CONCESSIONAIRE represents and warrants that it has independently inspected the Sites and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Sites. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Permit. CONCESSIONAIRE further acknowledges that the Sites are in the condition called for by this Permit, that CITY has performed all work, if any, related to the Sites and required by this Permit, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Sites, including without limitation the presence of any hazardous substances.
 13. Maintenance of the Sites. CONCESSIONAIRE shall, at CONCESSIONAIRE'S sole cost and expense and to CITY'S satisfaction, maintain the Sites in a decent, safe, healthy and sanitary condition at all times during the Term.

14. Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Sites in a creditable manner.
15. Inspection. CITY may, at all times upon prior notice, enter and inspect the Sites.
16. Insurance. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a current certificate of insurance for: (1) Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of Two Million Dollars (\$2,000,000).
 - A. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 - B. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Permit.
 - C. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
 - D. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
 - E. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Permit, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Sites, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
 - F. Modification. To assure protection from and against the kind and extent of risk existing on the Sites, CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Permit.

- G. Accident Reports. CONCESSIONAIRE shall report to CITY any accident causing more than Five Thousand Dollars (\$5,000) worth of property damage or any serious injury to persons on the Sites. Such report shall be delivered to CITY within five (5) days of such accident and shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- H. Failure to Comply. If CONCESSIONAIRE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. CONCESSIONAIRE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify CONCESSIONAIRE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. CONCESSIONAIRE shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice. **Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**
17. Indemnification. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
18. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in CONCESSIONAIRE'S use of the Sites, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

19. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Permit from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.
20. Drug-free Workplace. CONCESSIONAIRE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Sites and specifying the actions that will be taken against employees for violations of the prohibition; and
 - B. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. CONCESSIONAIRE'S policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
21. Disabled Access Compliance. CONCESSIONAIRE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
22. CONCESSIONAIRE'S Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE'S occupancy, use, development and maintenance of the Sites and any damages to the improvements on, under, or in the vicinity of the Sites resulting directly or indirectly thereby.
23. No Nuisance. CONCESSIONAIRE shall not use the Sites in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
24. No Assignment. CONCESSIONAIRE shall not assign any rights granted by this Permit or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.

25. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Sites, CONCESSIONAIRE shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE'S cost.
26. Advertisement and Marketing. Any advertising or marketing which reference the City of San Diego may not be distributed by the CONCESSIONAIRE without the advanced written approval of the CITY. If CONCESSIONAIRE uses the City of San Diego in any context to promote its business operations without prior written approval by CITY, CONCESSIONAIRE will be considered to be in default. No advertising or marketing materials of any kind may be posted or distributed on any City beach without the advanced written approval of the CITY.
27. Encumbrances. CONCESSIONAIRE shall keep the Sites free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Sites, including without limitation CONCESSIONAIRE'S failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
28. Defaults and Remedies.
- A. Default by CONCESSIONAIRE. In the event that:
- i. CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Permit to be performed or fulfilled by CONCESSIONAIRE and shall fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
 - ii. CONCESSIONAIRE shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or
 - iii. CONCESSIONAIRE shall make a general assignment for the benefit of creditors;
- then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate this Permit and all rights of CONCESSIONAIRE and of all persons claiming rights through CONCESSIONAIRE to the Concession Sites or to possession thereof, and

CITY may then enter and take possession of the Sites and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided; however, in the event that any default described in Part (1)a. of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY shall not terminate this Permit pursuant to the default if CONCESSIONAIRE immediately commences to cure the default and diligently pursues cure to completion. In any event, either party may terminate this Permit without cause by giving ninety (90) days written notice of intent to terminate to the other party.

B. Abandonment by CONCESSIONAIRE. Even though CONCESSIONAIRE has breached the Permit and abandoned the Concession Site(s), this Permit shall continue in full force and effect for so long as CITY does not terminate this Permit, and CITY may enforce all its rights and remedies under this Permit, including, but not limited to, the right to recover the concession fee as it becomes due, plus damages. For purposes of this section, the following do not constitute a termination of CONCESSIONAIRE's right to possession or operation:

- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Permit.
- ii. The appointment of a receiver upon initiative of CITY to protect CITY'S interest under this Permit.

29. Damages. Damages which CITY may recover in the event of default under this Permit include the worth, at the time of the award, of the amount by which the unpaid concession fee for the balance of the term after the date of award or for any shorter period of time specified in this Permit exceeds the amount of concession fee loss for the same period that the CONCESSIONAIRE proved could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

30. Compliance with Laws. CONCESSIONAIRE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites.

31. Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Sites, including any licenses or permits. CONCESSIONAIRE acknowledges that this Permit may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE shall pay all such possessory interest taxes. CONCESSIONAIRE'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Permit.

32. Hazardous Substances. CONCESSIONAIRE shall not allow the installation or release of hazardous substances in, on, under, or from the Sites. CONCESSIONAIRE and CONCESSIONAIRE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Sites without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.

- A. Remediation. If any release of a hazardous substance occurs, CONCESSIONAIRE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
- B. Indemnity. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- C. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Sites, CONCESSIONAIRE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, CONCESSIONAIRE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Sites.
- D. Environmental Assessment. At CITY'S option upon expiration or termination of this Permit, an environmental assessment of the Sites shall be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE'S sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Sites, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with

recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and CONCESSIONAIRE shall pay all costs and expenses therefor.

33. Waiver. CITY'S failure to insist upon the strict performance of any of CONCESSIONAIRE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Sites is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
34. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
35. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
36. Number and Gender. Words of any gender used in this Permit shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
37. Captions. Section headings and captions shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Permit. The numbers of the paragraphs and pages of this Permit may not be consecutive. Such lack of consecutive numbers shall have no effect on the enforceability of this Permit.
38. Entire Permit. This Permit constitutes the entire Permit between the parties and supersedes any and all prior understandings, representations, warranties and Permits between them and pertaining to this Permit and CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
39. Legal Proceedings. If either party commences legal proceedings to enforce or interpret any right or obligation under this Permit, the prevailing party shall be entitled to an award of costs related thereto, including without limitation reasonable attorney fees and court costs.

40. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

THE CITY OF SAN DIEGO	Pacific Beach Surf School
Real Estate Assets Department	Randy Strunk
Attention: Director, Real Estate Assets Department	4150 Mission Blvd., Suite 161
1200 Third Avenue, Suite 1700 (MS 51A)	San Diego, CA 92109
San Diego, California 92101	

41. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites.
42. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Permit shall be deemed to refer to "the Mayor or his/her designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

43. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Permit, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
James Barwick, Director
Real Estate Assets Department

Date: 4-7-08

PACIFIC BEACH SURF SCHOOL,
CONCESSIONAIRE

BY: Randy Strunk
Randy Strunk, Owner

APPROVED AS TO FORM AND LEGALITY:

Effective Date: _____

MICHAEL J. AGUIRRE, City Attorney

BY: _____,
Deputy City Attorney

EXHIBIT A

Central Area Sites (Pacific Beach)

000724

Site 1 Wilbur Street

Site 2 Beryl Street

Site 3 South of Pacific
Beach Drive

Site 4 North of Santa Rita
Place



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3. Description of Proposed Operations

During the summer Pacific Beach Surf School proposes to operate surf camps, private lessons, semi-private lessons, group lessons, as well as, community service programs on Central Area Site 3 and Site 4. In the winter, after school programs, private lessons, single-day surf camps, group lessons, community service programs and other programs would be operated on the sites.

000725

a. Summer Surf Camps

i. Material Covered

Pacific Beach Surf School is proud to provide the most educational surf camp in San Diego County. Our advanced curriculum enables campers to learn about surfing and related components in a safe and engaging format. We take an interpretive approach to every day's activities and lectures. Each day, lectures build on what was learned the following day. By the end of the week campers can confidently call one's self a water-woman or water-man.

The following is a summary of the material covered. For a detailed sample curriculum see Appendix 3.

- | | |
|---|--------------------------------|
| - Safety | - Surf Forecasting & Reporting |
| - Environmental Awareness | - Environmental Studies |
| - Lifeguard System and Protection | - The 3 R's |
| - Surf Lessons (both body-surfing & on a soft surf board) | - Etiquette |
| - Surf History | - Teambuilding |
| - Surf Equipment, Materials, & Development | - Physical Fitness & Warm-Ups |
| - Oceanography | - Indo-Boarding |
| - Meteorology | - Guest Speakers |
| | - Surfer's Code |
| | - Surf Videos |

ii. Summer Camp Schedule

Week 1.....June 9-13
 Week 2.....June 16-20
 Week 3.....June 23-27
 Week 4.....June 30-July 3
 Week 5.....July 7-11
 Week 6.....July 14-18

Week 7.....July 21-25
 Week 8.....July 28-August 1
 Week 9.....August 4-8
 Week 10.....August 11-15
 Week 11.....August 18-22
 Week 12.....August 25-29

In the summer Full-Day and Half-Day Camps would be operated on the two sites.

Private lessons would run at the same time as camps. At no time will Concessionaire exceed the number of students specified in this Agreement.

b. Private Lessons

Historically, more than 3,100 students take private lessons annually at Pacific Beach Surf School. These are generally 1 ½ hour (90-minute) lessons held during the hours allowed under the Agreement. Lessons are tailored to the individual student(s) needs and ability. In some cases, entire families take a private lesson together.

In most cases, this is a walk-up or short-term, reservation-based service which is publicized through our brochures, website and hotel concierge marketing program. City can expect performance to remain consistent with past years through the life of this agreement.

000726

c. Private Group Lessons

Private group lessons are conducted year-round. These are generally school groups, companies, and other private groups. Operator will continue to aggressively market these group lessons.

d. Number of Students

Per the Concession Agreement, there will be a maximum of 50 students in each class, with a maximum of twenty-five students in the water at any one time. The instructor-to-student ratio is a maximum of 1-to-5. Private lessons may be run at the same time as camps. Group lessons and events may also run at the same time camps. At no time will Pacific Beach Surf School exceed the number of students in the Agreement.

Additionally, Pacific Beach Surf School's Surf Camps will maintain a maximum instructor-to-student ratio 1-to-4.

e. Rates and Hours of Operations

Per this Agreement, maximum hours of land-based operations are 8:30 a.m. to 5:00 p.m., with water instruction permitted between 9:30 a.m. and 5:00 p.m. All Concessions will be vacated by 5:00 p.m. daily. Operations may be scheduled seven days a week, except for the Fourth of July and any other black out dates specified by the City.

The following is the rate schedule and program hours for 2008, pending approval of this contract. Operators retain the right to change rates at any time. Also, operators retain the right to change program hours, within the maximum hours specified in this agreement, at any time.

i. Private Lessons

1 ½ -hour lessons are available year-round, seven days a week (except for the Fourth of July on any other blackout dates specified by the City).

1 Student.....	\$ 85
2 Students or two lessons for one student, prepaid.....	\$ 80
3-5 Students.....	\$ 75